REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

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IFC CAPITALIZATION (EQUITY) FUND, LP, Petitioner,	**CTA Case No. 9148**
	Members:
- versus -	**DEL ROSARIO,** P.J., Chairperson, **UY,** and **MINDARO-GRULLA,** JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** JAN 17 2019 , 3:20 pm

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DECISION

UY, J.:

The instant *Petition for Review*,[1] filed on September 24, 2015, by IFC Capitalization (Equity) Fund, LP, petitioner, seeks the refund from respondent, the Commissioner of Internal Revenue, of allegedly erroneously withheld stock transaction tax on the sale of its listed shares of stock in Banco De Oro (BDO) Unibank, Inc. from September 20, 2013 to September 3, 2014 in the amount of ₱62,444,698.37.

THE FACTS

Petitioner IFC Capitalization (Equity) Fund, LP is a non-resident foreign limited partnership, organized and existing under the laws of the State of Delaware, United States of America (USA). It has a registered office address at 2711 Centerville, Road, Suite 400,

[1] Docket – Vol. I, pp. 10 to 28.

Wilmington, Delaware, 19808, USA;[2] but it is not registered as a corporation or partnership in the Philippines.[3]

On the other hand, respondent is the duly-appointed Commissioner of Internal Revenue, with office address at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.[4] He is vested with authority to administer and enforce all laws pertaining to internal revenue taxes and has jurisdiction to decide refunds and disputed tax assessments.[5]

Petitioner is engaged in the business of making investments in the private sector banks that have systemic impact in their home markets.[6] From September 20, 2013 to September 3, 2014, petitioner had total commitments of US$1.275 billion, with ownership interests as follows: (i) Limited Partners – International Finance Corporation (IFC) (60.78%) and Japan Bank for International Cooperation (JBIC) (39.22%); and (ii) petitioner's General Partner, IFC Capitalization (Equity) Fund (GP), LLC.[7]

In effect, petitioner claims that it is owned and controlled by financing institutions that are in turn owned, controlled, or enjoying refinancing from foreign governments or international or regional financial institutions established by foreign governments.[8]

From September 20, 2013 to September 3, 2014, petitioner, as the beneficial owner of 140,289,079 listed BDO shares, traded said shares in the Philippines Stock Exchange (PSE) through the assistance of two trading companies, namely, Deutsche Securities Asia Limited (DSAL) and UBS Securities Asia Limited (USAL).[9]

All trade instructions by petitioner were received by the trading companies, DSAL and USAL, which then forwarded the same to their

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[2] Exhibit "P-11", Docket – Vol. V, pp. 2625 to 2637.
[3] Exhibit "P-12", Docket – Vo. V, pp. 2639.
[4] Par. 1, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), Docket – Vol. IV, p. 2266.
[5] Par. 1, Stipulation of Facts, JSFI, Docket – Vol. IV, p. 2266.
[6] Q/A No. 4, Judicial Affidavit (JA) of Serge Jules Devieux dated March 28, 2016, Docket – Vol. II, p. 816.
[7] Q/A No. 5, Judicial Affidavit (JA) of Serge Jules Devieux dated March 28, 2016, Docket – Vol. II, p. 817.
[8] Q/A No. 5, Judicial Affidavit (JA) of Serge Jules Devieux dated March 28, 2016, Docket – Vol. II, pp. 817 to 818.
[9] Q/A No. 8, Q/A No. 5, Judicial Affidavit (JA) of Serge Jules Devieux dated March 28, 2016, Docket – Vol. II, p. 818; Exhibit "P-22".

respective stockbrokers, Deutsche Regis Partners, Inc. (DRPI) and UBS Securities Philippines, Inc. (UBS).

The stockbrokers DRPI and UBS withheld Stock Transaction Tax (STT) from the sale proceeds of the BDO shares in the aggregate amount of ₱62,444,698.37, consisting of (i) ₱42,256,810.28 withheld by DRPI,[10] and (ii) ₱20,187,888.09 withheld by UBS.[11]

The net proceeds of the sale where DRPI acted as stockbroker, were remitted directly to J.P. Morgan Chase Bank, N.A., a custodian bank of petitioner. While, on the other hand, the net proceeds of the sale where UBS acted as stockbroker were remitted to Hongkong and Shanghai Banking Corporation (HSBC), a sub-custodian bank for J.P. Morgan Chase Bank, N.A.[12]

On July 6, 2015, petitioner filed a *Letter Re: Request for Refund* dated June 25, 2015 with the BIR – Revenue District Office (RDO) No. 39,[13] requesting refund of erroneously withheld STT in the total amount of ₱62,444,698.37.

Thereafter, claiming inaction on the part of respondent, petitioner elevated its request for refund to this Court via the instant *Petition for Review* on September 24, 2015.

On December 1, 2015, respondent filed his *Answer*,[14] alleging, *inter alia*, that the truth of the matter is that petitioner paid the correct taxes pursuant to Section 127 of the National Internal Revenue Code (NIRC), as amended; that in an action for tax refund/credit, the burden of proof rests upon the taxpayer to establish by sufficient and competent evidence its entitlement to a claim for refund/credit, and failure to adduce sufficient proof is fatal to the action for tax refund/credit; that basic is the rule that tax refunds are in the nature of tax exemptions and are to be construed *strictissimi juris* against the entity claiming the same; that petitioner must prove compliance with governing rules relative to tax recovery or refund as provided under Sections 204(C) and 229 of the 1997 NIRC, as amended; that taxes collected are presumed to be in accordance with laws and

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[10] Exhibits "P-6-1" to "P-6-84".
[11] Exhibits "P-7-1" to "P-7-15".
[12] Exhibit "P-24"; Q/A Nos. 6-9, JA of Ann M. Osti dated March 29, 2016, Docket – Vol. III, pp. 2143 to 2144.
[13] Exhibit "P-25".
[14] Docket – Vol. I, pp. 785 to 788.

regulations; and that petitioner failed to sufficiently prove and demonstrate that the subject tax was erroneously or illegally collected.

Subsequently, a *Notice of Pre-Trial Conference* was issued by this Court,[15] setting the case for pre-trial conference on April 7, 2016 at 9:00 a.m. The parties were further ordered to file with the Court their respective pre-trial briefs at least three (3) days before the said date.

In compliance, petitioner's *Pre-Trial Brief* was filed on April 1, 2016,[16] while respondent's *Pre-Trial Brief* was filed on April 5, 2016.[17]

On April 6, 2016, petitioner filed a *Motion to Commission Independent Certified Public Accountant.*[18] Petitioner prays that Emmanuel Y. Mendoza of Mendoza Querido & Co., be commissioned by this Court as the Independent Certified Public Accountant (ICPA) for the instant case pursuant to Section 5, Rule 12 of the Revised Rules of the Court of Tax Appeals (RRCTA).

In the Order dated June 23, 2016,[19] this Court granted petitioner's *Motion to Commission Independent Certified Public Accountant*, thereby, commissioning Emmanuel Y. Mendoza as the duly-appointed ICPA. Moreover, this Court ordered, among others, that the ICPA must submit his report on or before July 25, 2016. In compliance therewith, the ICPA submitted his ICPA report on July 22, 2016.

On July 5, 2016, petitioner filed a *Motion*,[20] praying that an Order be issued by this Court allowing the deposition upon written interrogatories of Serge Jules Devieux and Anne M. Osti. Petitioner likewise prays that the Office of Legal Affairs of the Department of Foreign Affairs as well as the Philippine Embassy in Singapore and in New York, USA, be directed to assist in the taking of the deposition of petitioner's witnesses.

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[15] Docket – Vol. I, pp. 789 to 790.
[16] Docket – Vol. II, pp. 793 to 805.
[17] Docket – Vol. III, pp. 2166 to 2168.
[18] Docket – Vol. III, pp. 2173 to 2177.
[19] Docket – Vol. IV, pp. 2228 to 2231.
[20] Docket – Vol. IV, pp. 2243 to 2250.

In the Resolution dated July 14, 2016,[21] this Court granted petitioner's *Motion.*

Meanwhile, on July 11, 2016, the parties filed their *Joint Stipulation of Facts and Issue* (JSFI),[22] which was later on approved by this Court in the Resolution dated July 25, 2016.[23]

Then, on September 19, 2016, this Court issued a Pre-Trial Order,[24] which directed the parties, among others, to submit the judicial affidavits of their respective witnesses at least five (5) days before the scheduled hearing pursuant to the provisions of Administrative Matter (A.M.) No. 12-8-8-SC, otherwise known as the Judicial Affidavit Rule, in relation to CTA Circular No. 01-2013, otherwise known as the "*CTA Guidelines Implementing the Judicial Affidavit Rule*". In the same Pre-Trial Order, this Court deemed the pre-trial terminated.

On September 26, 2016, petitioner filed an *Exception with Motion to Amend Pre-Trial Order*,[25] primarily praying that the Pre-Trial Order dated September 19, 2016 be amended by excluding the exhibit markings designated in the JSFI and, instead, reflect only those exhibit markings made or adopted during the commissioner's hearings. Thus, on May 22, 2017, this Court issued an Amended Pre-Trial Order.

During trial, petitioner presented the following witnesses, namely: Daniel I. Orajay, Serge Jules Devieux, Ann M. Osti, and ICPA Emmanuel Y. Mendoza.

Petitioner subsequently filed an *Offer of Documentary Evidence* on April 17, 2017,[26] formally offering Exhibits "P-1" to "27-1", inclusive of sub-markings as its documentary exhibits. Thereafter, on August 25, 2017, this Court issued a Resolution admitting petitioner's exhibits, except for Exhibits "P-21" and "P-25-3a" to "P-25-3o", for petitioner's failure to present the original copies of the said exhibits for comparison.

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[21] Docket – Vol. IV, p. 2294.
[22] Docket – Vol. IV, pp. 2266 to 2274.
[23] Docket – Vol. IV, p. 2305.
[24] Docket – Vol. IV, pp. 2373 to 2395.
[25] Docket – Vol. IV, pp. 2413 to 2428.
[26] Docket – Vol. V, pp. 2590 to 2607.

On September 14, 2017, petitioner filed a *Motion for Partial Reconsideration*, seeking reevaluation of the denied exhibits. Petitioner argues that Exhibit "P-21", which refers to the Japan Bank for International Cooperation Act of 2011 (Act No. 39), is offered under the Rules of Electronic Evidence. While, Exhibits "P-25-3a" to "P-25-3o" are offered as original computer print-out were examined and identified by the ICPA. Moreover, petitioner also moved that this Court considers Exhibit "P-27-2", which the assailed Resolution allegedly might have inadvertently omitted. Petitioner claims that its counsel made an *Oral Supplemental Offer of Evidence* in the court hearing dated May 2, 2017 for the purpose of proving that the Deposition Records were duly transmitted to the Court by the Department of Foreign Affairs on March 13, 2017. The said Exhibit "P-27-2" refers to the Letter dated March 3, 2017 by Acting Assistant Secretary Atty. Leo Tito L. Ausan, Jr. of the Department of Foreign Affairs.

Thus, in the Resolution dated December 5, 2017,[27] this Court granted petitioner's *Motion for Reconsideration*, thereby admitting Exhibits "P-21" and "P-25-3a" to "P-25-3o". As for Exhibit "P-27-2", this Court ruled that, although not included in its *Offer of Documentary Evidence*, the same was already noted by this Court in the May 2, 2017 court hearing.

During the initial presentation of respondent's evidence on December 7, 2017, counsel for petitioner manifested that, as of the moment, respondent has failed to submit any judicial affidavits of his intended witnesses. Consequently, for failure of respondent's counsel to comply with the Pre-Trial Order dated September 19, 2016, which granted respondent's counsel five (5) days before the scheduled hearing within which to submit the Judicial Affidavits of his witnesses, petitioner's counsel moved that the right of respondent to present his intended witnesses named in the Pre-trial Order be deemed waived.

Finding merit, this Court granted petitioner's Motion in the Order dated December 7, 2017, and deemed respondent to have waived his right to present his intended witnesses named in the Pre-Trial Order. Moreover, this Court also gave the parties a period of thirty (30) days within which to submit their respective memorandum.[28]

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[27] Docket – Vol. VI, pp. 3333 to 3336.
[28] Order dated December 7, 2017, Docket – Vol. V, p. 3338.

On January 8, 2018, petitioner filed, through licensed private courier, its *Memorandum*;[29] while respondent failed to file his.[30] Accordingly, in the Resolution dated January 24, 2018,[31] the instant case was deemed submitted for decision.

Hence, this decision.

THE ISSUE

As stipulated by the parties, the sole issue for this Court's resolution is:

> "Whether or not petitioner is entitled to the refund of the withheld stock transaction tax on the sale of its listed BDO Unibank, Inc. shares of stock in the PSE from September 20, 2013 to September 3, 2014 in the amount of Sixty-Two Million Four Hundred Forty-Four Thousand Six Hundred Ninety-Eight Pesos and Thirty-Seven Centavos (₱62,444,698.37)."[32]

Petitioner's arguments:

Petitioner argues that it is exempt from STT, and as such, its sales of shares in the local stock exchange should not have been subjected to withholding tax by the stockbrokers. Based on the principle of *solutio indebiti*, the STT erroneously collected by the BIR must allegedly be returned to petitioner as the beneficial owner of the listed BDO shares traded in the PSE considering that petitioner complied with the procedural requirements for the refund of its erroneously withheld STT on the sale of its listed BDO shares.

Respondent's counter-arguments:

Respondent maintains that petitioner is not entitled to tax refund or issuance of tax credit on the basis that petitioner paid the correct taxes, pursuant to Section 127 of the NIRC, as amended. considering that tax refunds are in the nature of tax exemptions and are to be construed strictly against the entity claiming the same,

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[29] Docket – Vol. VI, pp. 3371 to 3398.
[30] Records Verification dated January 18, 2018 issued by the Judicial Records Division of this Court, Docket – Vol. VI, p. 3428.
[31] Docket – Vol. VI, p. 3431.
[32] Stipulation of Issue, JSFI, Docket – Vol. IV, p. 2267.

petitioner failed to sufficiently prove and demonstrate that the subject tax was erroneously or illegally collected, pursuant to Section 204(C) and 229 of the NIRC, as amended.

THE COURT'S RULING

After due consideration, this Court finds petitioner's arguments meritorious.

The provisions of the NIRC of 1997, as amended, pertinent to claiming a tax refund of erroneously paid tax are Sections 204(C) and 229, which read as follows:

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may –
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> x x x
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchases, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer filed in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty**: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund." *(Emphasis supplied)*
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> "SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been **erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, of any sum alleged to have been excessively or in any manner wrongfully collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected**, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or

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> not such tax, penalty, or sum has been paid under protest or duress.
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> **In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment**: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." *(Emphases supplied)*

Based on the foregoing provisions, the following requisites must be satisfied in the instant case, to wit:

1. There must be an erroneous or illegal collection of tax, or a penalty collected without authority, or sum excessively or wrongfully collected;

2. The claim for refund has been duly filed with the Commissioner, within two (2) years after the payment of tax or penalty; and

3. The suit or proceeding is instituted with this Court within two (2) years from the date of payment of the tax or penalty.

The claim for refund has been duly filed with respondent, and the suit or proceeding was instituted with this Court, both within two (2) years from the date of payment of the tax or penalty.

It is clear from the aforequoted Sections 204(C) and 229 that both the administrative and judicial claims must be filed within the two (2)-year prescriptive period indicated therein.[33]

In the instant case, the first STT was paid and remitted to the BIR on September 25, 2013.[34] Counting two (2) years from the said

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[33] *Metropolitan Bank & Trust Company vs. The Commissioner of Internal Revenue*, G.R. No. 182582, April 17, 2017; and *CBK Power Company Limited vs. Commissioner of Internal Revenue, etseq.*, G.R. Nos.193383-84 and 193407-08, January 14, 2015.
[34] Exhibit "P-18-1".

date, petitioner had until September 25, 2015 within which to file its claim for refund/tax credit certificate both in the administrative and judicial levels. Given that petitioner filed its administrative claim on July 6, 2015,[35] and its judicial claim on September 24, 2015,[36] the claim for refund on the alleged erroneously or illegally collected STT is well within the two-year prescriptive period.

There is an erroneous or illegal collection of tax.

Section 32(B)(7)(a) of the NIRC of 1997, as amended, provides that:

> "SEC. 32. *Gross Income.* –
>
> x x x
>
> (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.* –
>
> (a) *Income Derived by Foreign Government* – Income derived from investments in the Philippines in loans, stocks, bonds or other domestic securities, or from interest on deposits in banks in the Philippines by (i) foreign governments, (ii) financing institutions owned, controlled, or enjoying refinancing from foreign governments, and (iii) international or regional financial institutions established by foreign governments."

The above provision states that for an income, which is derived from investments in the Philippines in loans, stocks, bonds or other domestic securities, or from interest on deposits in banks in the Philippines, be exempt from income tax and consequently, from withholding tax, the income earner must be a (1) foreign government, or (2) a financing institution owned, controlled, or enjoying refinancing from foreign governments, or (3) an international or regional financial institution established by foreign governments.

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[35] *Supra* No. 13.
[36] *Supra* No. 1.

In the instant case, to prove that it is one of the income earners enumerated under Section 32(B)(7)(a) of the 1997, petitioner presented the following documentary evidence, viz.:

1. Authenticated Certificate of Formation of Limited Partnership of IFC Capitalization (Equity) Fund GP, LLC dated January 22, 2009;[37]

2. Authenticated Certificate of Amendment of IFC Capitalization (Equity) Fund GP, LLC dated June 2, 2009;[38]

3. Authenticated Certificate of Formation of Limited Partnership of IFC Capitalization (Equity) Fund L.P. dated January 23, 2009;[39]

4. Authenticated Certificate of Amendment of IFC Capitalization (Equity) Fund L.P. dated June 2, 2009;[40]

5. Authenticated Certificate of Formation of IFC Asset Management Company, LLC dated January 27, 2009;[41] and,

6. Securities and Exchange Commission Certification of Non-Registration of Company issued to ICEF on July 19, 2016.[42]

After perusal thereof, this Court finds the Certificate of Authentication[43] issued by the Philippine Consul in the USA as sufficient evidence to prove the due execution and genuineness of the documents submitted.

In the case of *Angelita Lopez, et al. vs. Court of Appeals, et. al.*,[44] a document executed in a foreign country cannot be admitted in evidence unless it is certified by a secretary of embassy or legation, consul-general, consul, vice-consul or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept of said public document and authenticated by the seal of office.

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[37] Exhibit "P-11".
[38] *Ibid.*
[39] *Ibid.*
[40] *Ibid.*
[41] *Ibid.*
[42] Exhibit "P-12".
[43] Exhibit "P-11".
[44] G.R. No. 77008, December 29, 1987.

In the instant case, petitioner was able to prove compliance with the foregoing requirements. Specifically, the above-stated Certificate of Authentication was issued by Arlene Tullid-Magno, Consul for the Embassy of the Philippines, Washington, D.C., USA, with the seal of her office, relative to the documents concerning the formation of IFC Capitalization (Equity) Fund GP, LLC, IFC Capitalization (Equity) Fund L.P., and IFC Asset Management Company, LLC, in the USA.

Moreover, to further establish that petitioner is owned and controlled by financing institutions that are in turn owned, controlled, or enjoying refinancing from foreign governments, petitioner presented the testimony, by way of a judicial affidavit, of Serge Jules Devieux, Co-Head of IFC Financial Institutions Fund of IFC Assessment Management Company, LLC. Devieux, testified as to the ownership structure of petitioner which can be summarized as follows, thus:

> 1. The ownership interest in petitioner is as follows: (i) Limited Partners – International Finance Corporation (IFC) (60.78%) and Japan Bank for International Cooperation (JBIC) (39.22%); and (ii) IFC Capitalization (Equity) Fund GP, LLC;[45]
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> 2. IFC Capitalization (Equity) Fund GP, LLC is the General Partner of petitioner, which is wholly owned and controlled by IFC Asset Management Corporation, LLC (AMC); [46]
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> 3. As General Partner, IFC Capitalization (Equity) Fund GP, LLC manages and controls petitioner;[47]
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> 4. AMC, a wholly owned subsidiary of IFC, is the fund management business of IFC, managing third party capital across various funds that invest in IFC transactions in developing countries, including the Philippines.[48]
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> 5. IFC, an international financing organization established by the Articles of Agreement among its member countries, including the Republic of the Philippines, assists in financing the establishment, improvement and expansion of productive private enterprises which would contribute to the development of its member countries by making

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[45] Q/A No. 5, JA of S. Devieux, Docket (Vol. II), p. 817.
[46] Q/A Nos. 3 and 5, *Ibid*, pp. 816-817.
[47] Q/A Nos. 2 and 5, *Id.*
[48] Q/A Nos. 2 and 5, *Id.*

investments, without guarantee of repayment by the member governments concerned, in cases where sufficient private capital is not available on reasonable terms.[49]

6. With regard to JBIC, it is owned and controlled by the Japanese Government.[50]

Based on these circumstances, petitioner has established that it is owned and controlled by financing institutions which are in turn owned, controlled, or enjoying refinancing from foreign governments, specifically, IFC Capitalization (Equity) Fund GP, LLC, IFC, and JBIC. Hence, petitioner comes within the purview of the income earners enumerated under Section 32(B)(7)(a) of the NIRC of 1997. Such being the case, the income derived by petitioner from the sale of listed BDO shares in the PSE is exempt from income tax and consequently, STT.

Having settled that petitioner is exempt from income tax, which includes the STT,[51] this Court shall now determine whether petitioner has sufficiently substantiated its claim for refund.

Records of the case reveals that J.P. Morgan Chase Bank, N.A. holds in its custody, directly and through a sub-custodian, HSBC, various shares of stock owned by petitioner. Among these shares were the listed BDO shares which as of June 22, 2012 amounted to 156,791,913 shares.[52]

For the period covering September 20, 2013 to September 3, 2014, petitioner sold 140,289,079 BDO shares in the PSE through the assistance of two trading companies, DSAL and USAL, which forwarded all trade instructions by petitioner to their respective stockbrokers, DRPI and UBS.[53]

From the sales proceeds of the said listed BDO shares of petitioner, DRPI and UBS withheld stock transaction taxes which

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[49] Q/A No. *Id.* p. 817; *See* Article I, Republic Act No. 1604, "AN ACT AUTHORIZING PHILIPPINE MEMBERSHIP IN THE PROPOSED INTERNATIONAL FINANCE CORPORATION AND AUTHORIZING THE APPROPRIATION OF FUNDS THEREFOR", dated August 23, 1956.
[50] Exhibit "P-21".
[51] Refer to BIR Ruling [DA-474-05] dated November 18, 2005, wherein it was ruled that *"the stock transaction tax is essentially a tax on income"*.
[52] Exhibit "P-24"; Q/A No. 6, JA of A. Osti, Docket (Vol. III), p. 2143.
[53] Exhibits "P-8", "P-16", "P-17", and "P-23".

were remitted to the Bureau of Internal Revenue on various dates from September 25, 2013 to September 8, 2014, detailed as follows:

Transaction Date	No. of BDO Listed Shares Sold[54]	Gross Selling Price (In PHP)	Stock Transaction Tax Withheld (In PHP)	Exhibit	Date Remitted to the BIR	Exhibit
Sales made through DRPI						
20-Sep-13	427,170	34,685,819.55	173,429.10	P-6-1	25-Sep-13	"P-18-1"
23-Sep-13	177,330	14,363,730.00	71,818.65	P-6-2	26-Sep-13	"P-18-2"
24-Sep-13	288,430	23,362,858.84	116,814.29	P-6-3	27-Sep-13	"P-18-3"
26-Sep-13	6,390	517,590.00	2,587.95	P-6-4	01-Oct-13	"P-18-4"
17-Oct-13	1,342,000	108,724,948.20	543,624.74	P-6-5	22-Oct-13	"P-18-5"
18-Oct-13	698,000	56,539,326.20	282,696.63	P-6-6	23-Oct-13	"P-18-6"
21-Oct-13	125,000	10,125,000.00	50,625.00	P-6-7	24-Oct-13	"P-18-7"
22-Oct-13	45,260	3,666,060.00	18,330.30	P-6-8	25-Oct-13	"P-18-8"
23-Oct-13	7,300	591,300.00	2,956.50	P-6-9	29-Oct-13	"P-18-9"
30-Oct-13	195,500	15,835,500.00	79,177.50	P-6-10	05-Nov-13	"P-18-10"
31-Oct-13	1,534,900	124,471,794.56	622,358.97	P-6-11	06-Nov-13	"P-18-11"
04-Nov-13	447,370	36,238,133.16	181,190.67	P-6-12	07-Nov-13	"P-18-12"
11-Nov-13	558,750	45,398,437.50	226,992.19	P-6-13	14-Nov-13	"P-18-13"
24-Jan-14	2,729,000	221,630,549.90	1,108,152.75	P-6-14	29-Jan-14	"P-18-14"
12-Feb-14	223,700	18,119,700.00	90,598.50	P-6-15	17-Feb-14	"P-18-15"
17-Feb-14	405,763	32,866,803.00	164,334.02	P-6-16	20-Feb-14	"P-18-16"
18-Feb-14	1,420,940	115,137,489.35	575,687.45	P-6-17	21-Feb-14	"P-18-17"
19-Feb-14	5,957,490	484,315,936.80	2,421,579.68	P-6-18	24-Feb-14	"P-18-18"
20-Feb-14	2,684,000	223,500,169.20	1,117,500.85	P-6-19	25-Feb-14	"P-18-19"
24-Feb-14	285,010	23,822,560.85	119,112.80	P-6-20	27-Feb-14	"P-18-20"
25-Feb-14	1,164,490	98,039,926.94	490,199.63	P-6-21	28-Feb-14	"P-18-21"
26-Feb-14	28,750	2,438,322.00	12,191.61	P-6-22	03-Mar-14	"P-18-22"
28-Feb-14	1,092,320	91,600,098.26	458,000.49	P-6-23	05-Mar-14	"P-18-23"
04-Mar-14	1,471,330	123,806,828.45	619,034.14	P-6-24	07-Mar-14	"P-18-24"
05-Mar-14	1,524,210	128,771,357.64	643,856.79	P-6-25	10-Mar-14	"P-18-25"
06-Mar-14			672,505.89	P-6-26	11-Mar-14	"P-18-26"

[54] Exhibit "P-17".

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Transaction Date	No. of BDO Listed Shares Sold[54]	Gross Selling Price (In PHP)	Stock Transaction Tax Withheld (In PHP)	Exhibit	Date Remitted to the BIR	Exhibit
	1,591,826	134,501,178.69				
07-Mar-14	686,505	58,124,456.14	290,622.28	P-6-27	12-Mar-14	"P-18-27"
10-Mar-14	131,910	11,159,586.00	55,797.93	P-6-28	13-Mar-14	"P-18-28"
11-Mar-14	1,047,110	88,726,970.56	443,634.85	P-6-29	14-Mar-14	"P-18-29"
12-Mar-14	800,800	68,053,825.84	340,269.13	P-6-30	17-Mar-14	"P-18-30"
18-Mar-14	868,000	73,780,000.00	368,900.00	P-6-31	21-Mar-14	"P-18-31"
19-Mar-14	22,400	1,904,000.00	9,520.00	P-6-32	24-Mar-14	"P-18-32"
31-Mar-14	917,105	77,953,925.00	389,769.63	P-6-33	03-Apr-14	"P-18-33"
01-Apr-14	894,740	76,364,269.52	381,821.35	P-6-34	04-Apr-14	"P-18-34"
02-Apr-14	1,062,020	91,759,377.62	458,796.89	P-6-35	07-Apr-14	"P-18-35"
13-Jun-14	3,885,436	357,077,008.01	1,785,385.04	P-6-36	18-Jun-14	"P-18-36"
19-Jun-14	1,012,248	92,298,797.14	461,493.99	P-6-37	16-Jun-14	"P-18-37"
17-Jun-14	860,402	76,473,648.28	382,368.24	P-6-38	20-Jun-14	"P-18-38"
18-Jun-14	796,970	70,944,595.76	354,722.98	P-6-39	23-Jun-14	"P-18-39"
19-Jun-14	377,910	33,637,580.15	168,187.90	P-6-40	24-Jun-14	"P-18-40"
20-Jun-14	1,827,250	163,130,119.18	815,650.60	P-6-41	25-Jun-14	"P-18-41"
23-Jun-14	2,116,000	190,897,479.20	954,487.40	P-6-42	26-Jun-14	"P-18-42"
01-Jul-14	1,892,480	176,000,640.00	880,003.20	P-6-43	04-Jul-14	"P-18-43"
02-Jul-14	1,932,400	179,713,200.00	898,566.00	P-6-44	07-Jul-14	"P-18-44"
03-Jul-14	797,750	74,164,743.35	370,823.72	P-6-45	08-Jul-14	"P-18-45"
04-Jul-14	838,900	78,088,167.60	390,440.84	P-6-46	09-Jul-14	"P-18-46"
07-Jul-14	1,654,458	154,976,058.88	774,880.29	P-6-47	10-Jul-14	"P-18-47"
08-Jul-14	313,158	29,083,735.04	145,418.68	P-6-48	11-Jul-14	"P-18-48"
09-Jul-14	805,263	74,017,117.59	370,085.59	P-6-49	14-Jul-14	"P-18-49"
10-Jul-14	644,920	59,343,023.21	296,715.12	P-6-50	15-Jul-14	"P-18-50"
11-Jul-14	223,700	20,287,576.70	101,437.88	P-6-51	17-Jul-14	"P-18-51"
14-Jul-14	106,600	9,606,898.60	48,034.49	P-6-52	18-Jul-14	"P-18-52"
15-Jul-14	878,660	79,600,533.25	398,002.67	P-6-53	21-Jul-14	"P-18-53"
17-Jul-14	3,131,600	284,695,008.64	1,423,475.04	P-6-54	22-Jul-14	"P-18-54"
18-Jul-14	273,730	24,864,072.94	124,320.36	P-6-55	23-Jul-14	"P-18-55"

Transaction Date	No. of BDO Listed Shares Sold[54]	Gross Selling Price (In PHP)	Stock Transaction Tax Withheld (In PHP)	Exhibit	Date Remitted to the BIR	Exhibit
21-Jul-14	476,920	43,404,775.35	217,023.88	P-6-56	24-Jul-14	"P-18-56"
22-Jul-14	602,970	54,821,670.62	274,108.35	P-6-57	25-Jul-14	"P-18-57"
23-Jul-14	381,680	34,707,536.45	173,537.68	P-6-58	28-Jul-14	"P-18-58"
24-Jul-14	411,850	37,488,275.59	187,441.38	P-6-59	30-Jul-14	"P-18-59"
25-Jul-14	268,420	24,157,800.00	120,789.00	P-6-60	31-Jul-14	"P-18-60"
30-Jul-14	894,740	81,050,917.64	405,254.59	P-6-61	04-Aug-14	"P-18-61"
31-Jul-14	815,020	73,880,910.98	369,404.55	P-6-62	05-Aug-14	"P-18-62"
01-Aug-14	188,150	17,037,434.06	85,187.17	P-6-63	06-Aug-14	"P-18-63"
04-Aug-14	1,070,140	97,384,452.22	486,922.26	P-6-64	07-Aug-14	"P-18-64"
05-Aug-14	228,200	20,712,207.88	103,561.04	P-6-65	08-Aug-14	"P-18-65"
06-Aug-14	349,280	31,741,553.49	158,707.77	P-6-66	11-Aug-14	"P-18-66"
07-Aug-14	196,840	17,893,641.78	89,468.21	P-6-67	12-Aug-14	"P-18-67"
08-Aug-14	9,840	894,456.00	4,472.28	P-6-68	13-Aug-14	"P-18-68"
11-Aug-14	321,640	29,259,944.60	146,299.72	P-6-69	14-Aug-14	"P-18-69"
12-Aug-14	604,820	55,082,590.41	275,412.95	P-6-70	15-Aug-14	"P-18-70"
13-Aug-14	1,785,660	162,552,201.12	812,761.01	P-6-71	18-Aug-14	"P-18-71"
14-Aug-14	1,945,730	178,396,200.78	891,981.00	P-6-72	19-Aug-14	"P-18-72"
15-Aug-14	1,200,880	109,859,384.51	549,296.92	P-6-73	20-Aug-14	"P-18-73"
18-Aug-14	343,690	31,568,338.93	157,841.69	P-6-74	22-Aug-14	"P-18-74"
19-Aug-14	912,060	83,769,427.58	418,847.14	P-6-75	26-Aug-14	"P-18-75"
20-Aug-14	1,298,780	119,173,715.00	595,868.58	P-6-76	24-Aug-14	"P-18-76"
22-Aug-14	796,810	72,712,896.55	363,564.48	P-6-77	28-Aug-14	"P-18-77"
26-Aug-14	702,905	63,936,590.25	319,682.95	P-6-78	29-Aug-14	"P-18-78"
27-Aug-14	460,790	41,743,887.68	208,719.44	P-6-79	01-Sep-14	"P-18-79"
28-Aug-14	899,255	81,243,282.90	406,216.41	P-6-80	02-Sep-14	"P-18-80"
29-Aug-14	447,368	40,424,172.48	202,120.86	P-6-81	03-Sep-14	"P-18-81"
01-Sep-14	5,692,750	512,360,024.05	2,561,800.12	P-6-82	04-Sep-14	"P-18-82"
02-Sep-14	4,488,710	404,649,575.69	2,023,247.88	P-6-83	05-Sep-14	"P-18-83"
03-Sep-14	10,764,672	979,656,198.84	4,898,280.99	P-6-84	08-Sep-14	"P-18-84"
Sub-total	**95,793,224.00**	**8,451,361,896.72**	**42,256,809.48**			

Transaction Date	No. of BDO Listed Shares Sold[54]	Gross Selling Price (In PHP)	Stock Transaction Tax Withheld (In PHP)	Exhibit	Date Remitted to the BIR	Exhibit
Sales made through UBS						
04-Jul-14	2,124,392	197,568,456.00	987,842.28	P-10-1a	07-Jul-14	P-7-1; P-25-3a
10-Jul-14	1,789,474	164,631,608.00	823,158.04	P-10-2a	11-Jul-14	P-7-2; P-25-3b
17-Jul-14	1,789,474	162,627,397.12	813,136.99	P-10-3a	18-Jul-14	P-7-3; P-25-3c
21-Jul-14	1,789,474	162,842,134.00	814,210.67	P-10-4a	22-Jul-14	P-7-4; P-25-3d
24-Jul-14	1,342,105	122,131,555.00	610,657.78	P-10-5a	25-Jul-14	P-7-5; P-25-3e
04-Aug-14	894,737	81,421,067.00	407,105.34	P-10-6a	05-Aug-14	P-7-6; P-25-3f
06-Aug-14	1,476,316	134,344,756.00	671,723.78	P-10-7a	07-Aug-14	P-7-7; P-25-3g
12-Aug-14	1,221,316	111,139,756.00	555,698.78	P-10-8a	13-Aug-14	P-7-8; P-25-3h
14-Aug-14	1,878,947	171,923,650.50	859,618.25	P-10-9a	15-Aug-14	P-7-9; P-25-3i
19-Aug-14	3,231,646	295,695,609.00	1,478,478.05	P-10-10a	20-Aug-14	P-7-10; P-25-3j
20-Aug-14	3,201,377	292,925,995.50	1,464,629.98	P-10-11a	22-Aug-14	P-7-11; P-25-3k
22-Aug-14	894,737	81,421,067.00	407,105.34	P-10-12a	26-Aug-14	P-7-12; P-25-3l
28-Aug-14	6,766,483	608,983,470.00	3,044,917.35	P-10-13a	29-Aug-14	P-7-13; P-25-3m
29-Aug-14	2,674,324	242,026,322.00	1,210,131.61	P-10-14a	01-Sep-44	P-7-14; P-25-3n
02-Sep-14	13,421,053	1,207,894,770.00	6,039,473.85	P-10-15a	03-Sep-14	P-7-15; P-25-3o
Sub-total	**44,495,855.00**	**4,037,577,613.12**	**20,187,888.09**			
Total	**140,289,079.00**	**12,488,939,509.84**	**62,444,697.57**			

However, based on this Court's examination of the documents submitted, only the amount of ₱62,444,697.57, representing STT withheld on petitioner's sales of listed BDO shares of stock in the PSE from September 20, 2013 to September 3, 2014, was duly substantiated, and, indeed, was erroneously collected from petitioner.

Thus, considering that in the instant case, the administrative and judicial claims were filed within the two-year prescriptive period under Sections 204(C) and 229 of the NIRC of 1997, as shown earlier, and that there were erroneously collected/withheld STT in the amount of ₱62,444,697.57, petitioner was able to prove compliance with the requisites for the grant of the refund being sought.

WHEREFORE, premises considered, the instant *Petition for Review* is **GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** to petitioner, the correct amount of **₱62,444,697.57**, representing STT erroneously collected on income derived from the sale of 140,289,079 listed BDO shares in the PSE for the period from September 25, 2013 to September 8, 2014.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

See Dissenting Opinion

ROMAN G. DEL ROSARIO
Presiding Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice
Chairperson, Special 1st Division

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SPECIAL FIRST DIVISION

IFC CAPITALIZATION (EQUITY) FUND, LP,
Petitioner,

- *versus* -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9148

Members:

Del Rosario, *P.J., Chairperson,*
Uy, and
Mindaro-Grulla, *JJ.*

Promulgated:
JAN 17 2019 ; 3:20 pm

x- -x

DISSENTING OPINION

DEL ROSARIO, P.J.:

With utmost respect, I am constrained to withhold my assent to the *ponencia* of my esteemed colleague, the Honorable Associate Justice Erlinda P. Uy, which grants the Petition for Review and orders the refund, in favor of petitioner, of the Stock Transaction Tax (STT) in the amount of ₱62,444,697.57, withheld by stockbrokers, on the sale of petitioner's listed BDO Unibank, Inc. shares of stock in the Philippine Stock Exchange (PSE) from September 20, 2013 to September 3, 2014 and remitted to the Bureau of Internal Revenue (BIR) on various dates from September 25, 2013 to September 8, 2014.

The *ponencia* declared that the income derived by petitioner from the sale of listed shares in the PSE is exempt from income tax and consequently from STT pursuant to Section 32(B)(7)(a) of the National Internal Revenue Code (NIRC) of 1997, as amended. The *ponencia* referred to BIR Ruling [DA-474-05] dated November 18, 2005 which ruled that *"the stock transaction tax is essentially a tax on income"*. In sum, the *ponencia* held that since petitioner (an entity owned and controlled by financing institutions which are in turn owned, controlled, or enjoying refinancing from foreign governments) is exempt from income derived from investments in Philippine stocks pursuant to

Section 32(B)(7)(a) of the NIRC of 1997, as amended, petitioner is also exempt from STT which is also a tax on income.

I humbly beg to differ.

The tax rules on the sales of shares of stock, either listed and traded in the stock exchange, or those not listed and traded in the stock exchange, are provided in Chapters II and IV of the NIRC of 1997, as amended, pertinent portions of the provisions thereof provide:

"TITLE II
TAX ON INCOME

xxx xxx xxx

CHAPTER III
TAX ON INDIVIDUALS

SEC. 24. *Income Tax Rates –*

xxx xxx xxx

(C) ***Capital Gains from Sale of Shares of Stock not Traded in the Stock Exchange*** - The provisions of Section 39(B) notwithstanding, a **final tax** at the rates prescribed below is hereby imposed **upon the net capital gains** realized during the taxable year from the sale, barter, exchange or other disposition of shares of stock in a domestic corporation, except shares sold, or disposed of through the stock exchange

Not over P100,000................ 5%
On any amount in excess of P100,000............ 10%

xxx xxx xxx

SEC. 25. *Tax on Nonresident Alien Individual-*

(3) ***Capital Gains.*** - Capital gains realized from sale, barter or exchange of shares of stock in domestic corporations not traded through the local stock exchange, and real properties shall be **subject to the tax prescribed under** Subsections **(C)** and (D) of Section 24.

xxx xxx xxx

CHAPTER IV
TAX ON CORPORATIONS

SEC. 27. *Rates of Income tax on Domestic Corporations. –*

xxx xxx xxx

(D) *Rates of Tax on Certain Passive Incomes. – xxx*

(2) ***Capital Gains from the Sale of Shares of Stock Not Traded in the Stock Exchange***. - A **final tax** at the rates prescribed below shall be imposed **on net capital gains** realized during the taxable year from the sale, exchange or other disposition of shares of stock in a domestic corporation except shares sold or disposed of through the stock exchange:

Not over P100,000.............5%
Amount in excess of P100,000................10%

xxx xxx xxx

SEC. 28. *Rates of Income Tax on Foreign Corporations. –*

(A) *Tax on Resident Foreign Corporations. -*

xxx xxx xxx

(7) *Tax on Certain Incomes Received by a Resident Foreign Corporation.* Xxx

(c) ***Capital Gains from Sale of Shares of Stock Not Traded in the Stock Exchange***. - A **final tax** at the rates prescribed below is hereby imposed **upon the net capital gains** realized during the taxable year from the sale, barter, exchange or other disposition of shares of stock in a domestic corporation except shares sold or disposed of through the stock exchange:

Not over P100,000.................. 5%
On any amount in excess of P100,000...........10%

xxx xxx xxx

(B) Tax on Nonresident Foreign Corporation. –xxx

(5) *Tax on Certain Incomes Received by a Nonresident Foreign Corporation. - xxx*

(c) ***Capital Gains from Sale of Shares of Stock not Traded in the Stock Exchange***. - A **final tax** at the rates prescribed below is hereby imposed **upon the net capital gains** realized during the taxable year from the sale, barter, exchange or other disposition of shares of stock in a domestic corporation, except shares sold, or disposed of through the stock exchange:

Not over P100,000.....................5%
On any amount in excess of P100,000......... 10%

xxx xxx xxx." (Boldfacing supplied)

"TITLE V
OTHER PERCENTAGE TAXES

xxx xxx xxx

SEC. 127. ***Tax on Sale, Barter or Exchange of Shares of Stock Listed and Traded Through the Local Stock Exchange or Through Initial Public Offering.*** –

(A) *Tax on Sale, Barter or Exchange of Shares of Stock Listed and Traded Through the Local Stock Exchange.* - There shall be levied, assessed and collected on every sale, barter, exchange, or other disposition of shares of stock listed and traded through the local stock exchange other than the sale by a dealer in securities, a tax at the rate of one-half of one percent (1/2 of 1%) of the **gross selling price or gross value in money** of the shares of stock sold, bartered, exchanged or otherwise disposed which shall be paid by the seller or transferor.

xxx xxx xxx

(D) *Common Provisions.* - **Any gain derived from the sale, barter, exchange or other disposition of shares of stock under this Section shall be exempt from the tax imposed in Sections 24(C), 27(D)(2), 28(A)(8)(c), and 28(B)(5)(c) of this Code and from the regular individual or corporate income tax**.

Tax paid under this Section shall not be deductible for income tax purposes." (Boldfacing & underscoring supplied)

Generally, an income tax is imposed on gains from sale of shares of stock not traded in the stock exchange under Title II, Chapter IV of the NIRC of 1997, as amended, commonly known as Capital Gains Tax (CGT). With respect to the sale, barter or exchange of **shares of stock listed and traded through the local stock exchange**, any gain therefrom is already exempt from CGT and the regular income tax pursuant to Sec. 127(D) of the NIRC of 1997, as amended, **but the sale, barter or exchange of such shares of stock is subject to percentage tax under Sec. 127(A) of the NIRC of 1997, as amended**.

To my mind, the percentage tax for transactions involving shares of stock listed and traded through the local stock exchange under Section 127(A) of the NIRC of 1997, as amended, cannot be considered an income tax. **The tax on the sale of shares of stock listed and traded through the local stock exchange is not found in Title II (under Income Tax provision of the NIRC), but under Title V of the same Code pertaining to Percentage Tax.** The teachings in

Commissioner of Internal Revenue vs. Citytrust Investment Phils., Inc.,[1] is enlightening:

> "The GRT is a percentage tax under Title V of the Tax Code ([Section 121], Other Percentage Taxes), while the FWT is an income tax under Title II of the Code (Tax on Income). **The two concepts are different from each other**. In *Solidbank Corporation*, this Court defined that **a <u>percentage tax</u> is a national tax measured by a certain percentage of the gross selling price or gross value in money of goods sold, bartered or imported; or of the gross receipts or earnings derived by any person engaged in the sale of services.** xxx. **An <u>income tax</u>, on the other hand, is a national tax imposed on the net or the gross income realized in a taxable year.** xxx. Thus, there can be no double taxation here as the Tax Code imposes two different kinds of taxes. (Boldfacing & underscoring supplied)

Clearly, the basis of the STT is not the income or gain derived by petitioner in its BDO Unibank, Inc.'s listed shares through the PSE but the **gross selling price of said listed shares**, regardless of whether or not petitioner derived any income or gain therefrom.

Petitioner's reliance on Section 32(B)(7)(a) of the NIRC of 1997, as amended, in insisting for the exemption from STT of the sale of its BDO Unibank, Inc.'s listed shares through the PSE cannot be sustained.

Section 32(B)(7)(a) of the NIRC of 1997, as amended, provides:

> **"TITLE II**
> **TAX ON INCOME**
>
> xxx xxx xxx
>
> CHAPTER VI
> COMPUTATION OF GROSS INCOME
>
> SEC. 32. *Gross Income.* –
>
> xxx xxx xxx
>
> B) *Exclusions from Gross Income.* - The following items shall **not be included in <u>gross income</u> and shall be <u>exempt from taxation under this title</u>**: xxx
>
> (7) *Miscellaneous Items.* - (a) ***Income Derived by Foreign Government*** - Income derived from investments in the Philippines in loans, stocks, bonds or other domestic securities, or from interest on

of

[1] G.R. No. 139786, September 27, 2006.

> deposits in banks in the Philippines by (i) foreign governments, (ii) financing institutions owned, controlled, or enjoying refinancing from foreign governments, and (iii) international or regional financial institutions established by foreign governments." (Boldfacing & underscoring supplied)

While Section 32(B)(7)(a) of the NIRC of 1997, as amended, is plain and unequivocal in stating that the **income derived by foreign government is not to be included in the gross income and exempt from taxation under the title relating to *"Tax on Income"***, the said exemption from income tax, however, cannot be extended so as to exempt petitioner from STT which, as aforesaid, is not a tax on income.

Moreover, even without the exemption provided under Section 32(B)(7)(a) of the NIRC of 1997, as amended, Title V of the NIRC of 1997, as amended, specifically Section 127(D) thereof, explicitly exempts from CGT the sale of shares of stock listed and traded through the local stock exchange and categorically subjects said sale of listed shares to STT based on the gross selling price of said shares, under Section 127 (A) thereof.

Indeed, it is an elementary rule of statutory construction that the express mention of one person, thing, act, or consequence excludes all others. This rule is expressed in the familiar maxim *"expressio unius est exclusio alterius."* Where a statute, by its terms, is expressly limited to certain matters, it may not, by interpretation or construction, be extended to others. The rule proceeds from the premise that the legislature would not have made specified enumerations in a statute had the intention been not to restrict its meaning and to confine its terms to those expressly mentioned.[2]

The general rule of requiring adherence to the letter in construing statutes applies with particular strictness to tax laws and provisions of a taxing act are not to be extended by implication.[3] Tax laws may not be extended by implication beyond the clear import of their language, nor their operation enlarged so as to embrace matters not specifically provided.[4]

The power of taxation is an inherent attribute of sovereignty; the government chiefly relies on taxation to obtain the means to carry on

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[2] Romualdez vs. Marcelo, G.R. Nos. 165510-33, July 28, 2006.
[3] Commissioner of Internal Revenue vs. Ariete, G.R. No. 164152, January 21, 2010.
[4] Philippine Health Care Providers, Inc. vs. Commissioner of Internal Revenue, G.R. No. 167330, September 18, 2009.

its operations. Taxes are essential to its very existence; hence, the dictum that taxes are the lifeblood of the government. For this reason, the right of taxation cannot easily be surrendered; statutes granting tax exemptions are considered as a derogation of the sovereign authority and are strictly construed against the person or entity claiming the exemption.[5]

In fine, as there is nothing in the NIRC of 1997, as amended, which exempts the sale of shares of stock listed and traded through the local stock exchange from STT or percentage tax, **I submit that there is no basis to grant petitioner's claim for refund of STT on the sale of its BDO Unibank, Inc.'s shares of stock in the PSE** from September 20, 2013 to September 3, 2014 in the amount of P62,444,698.37.

ALL TOLD, **I VOTE** to **DENY** the Petition for Review for lack of merit.

ROMAN G. DEL ROSARIO
Presiding Justice

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[5] Commissioner of Internal Revenue vs. Eastern Telecommunications Philippines, Inc., G.R. No. 163835, July 7, 2010.