Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

GOODYEAR PHILIPPINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8188

For: Refund or Issuance of a Tax Credit Certificate

Members:
CASTAÑEDA, JR., Chairperson
CASANOVA, and
MINDARO-GRULLA, JJ.

Promulgated:
MAR 25 2013
4:25 p.m.

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DECISION

MINDARO-GRULLA, J.:

The instant Petition for Review was filed by petitioner Goodyear Philippines, Inc. pursuant to Section 7(a)(2) of Republic Act (RA) No. 1125, as amended by Section 7 of RA No. 9282, and Section 3(a)(2) of Rule 4 of the Revised Rules of the Court of Tax Appeals, as amended, (RRCTA). Petitioner seeks the refund or the issuance of a tax credit certificate (TCC) for the amount of ₱14,659,847.10, allegedly representing petitioner's erroneously withheld final withholding tax (FWT) on dividends.

Petitioner is a domestic corporation duly registered with the Securities and Exchange Commission (SEC)[1], with registered address at Alabang-Zapote Road, Barangay Almanza, Las Pinas, City[2]. It is also registered with the Bureau of Internal Revenue (BIR) as a large taxpayer and

[1] Exhibit "E"
[2] Par. 1, Parties, Petition for Review, Docket, p. 5

was issued Taxpayer Identification Number (TIN) 000-409-561-000[3].

Respondent Commissioner of Internal Revenue (CIR) is the officer vested by law with authority to refund overpaid as well as erroneously or illegally collected internal revenue taxes[4]. Respondent may be served with summons, pleadings and other court processes at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On August 19, 2003, the SEC approved petitioner's application for increase in its authorized capital stock from ₱400,000,000.00, divided into 4,000,000 shares with a par value of ₱100.00 each, to ₱1,731,863,000.00 divided into 4,000,000 common shares and 13,318,630 preferred shares with a par value of ₱100.00 each[5].

The 13,318,630 preferred shares of petitioner with an aggregate par value of ₱1,331,863,000.00 were solely and exclusively subscribed by Goodyear Tire and Rubber Company (GTRC)[6]. GTRC is a foreign company organized and existing under and by virtue of the laws of the State of Ohio, United States of America (US)[7], with principal office at 1144 East Market Street, Akron, Ohio[8]. GTRC is not registered as a corporation or partnership in the Philippines[9].

In a regular meeting held on May 30, 2008, the Board of Directors of petitioner authorized the redemption on October 15, 2008 of 3,729,216 preferred shares issued to GTRC at the redemption price equivalent to ₱100.00 per share and the amount of dividends accrued and unpaid at the date of redemption (hereinafter referred to as

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[3] Par. 1, Joint Stipulation of Facts, Joint Stipulation of Facts and Issues, Docket, p. 255
[4] Par. 1, Facts Admitted in Respondent's Answer, Joint Stipulation of Facts and Issues, Docket, p. 252
[5] Exhibit "F"
[6] Exhibit "F-2"
[7] Exhibit "Y"
[8] Page 4, Exhibit "G-1"
[9] Exhibit "DD"

"Redemption Price"), which shall be payable to GTRC on November 15, 2008[10].

The total payment at redemption amounted to ₱470,653,914.00, broken down as follows:[11]

Aggregate Par Value (P100.00 per share x 3,729,216 shares)	₱ 372,921,600.00
Accrued and unpaid dividends	97,732,314.00
Redemption Price	**₱ 470,653,914.00**

On October 15, 2008, thirty (30) days before the payment of the Redemption Price to GTRC on November 15, 2008, petitioner and GTRC jointly filed an Application for Relief from Double Taxation (BIR Form No. 1928)[12] with the International Tax Affairs Division (ITAD) of the BIR, requesting confirmation, among others, that the redemption by petitioner of its 3,729,216 preferred shares held by GTRC is not subject to Philippine income tax pursuant to the Republic of the Philippines-US (RP-US) Tax Treaty.[13]

On November 3, 2008, allegedly taking a conservative position, petitioner withheld and remitted to the BIR the amount of ₱14,659,847.10[14], representing the 15% FWT imposed under Section 28(B)(5)(b) of the National Internal Revenue Code (NIRC) of 1997, as amended, computed on the basis of the difference between the Redemption Price and the aggregate par value of the shares redeemed, to wit:

Redemption Price	₱ 470,653,914.00
Par Value/Cost of Acquisition (P100.00 per share x 3,729,216 shares)	₱ 372,921,600.00
Difference	97,732,314.00
Multiplied with 15% FWT	**₱ 14,659,847.10**

[10] Exhibit "X"
[11] Exhibit "T"
[12] Exhibit "W"
[13] Convention between the Government of the Republic of the Philippines and the Government of the United States of America with Respect to Taxes on Income
[14] Par. 3, Joint Stipulation of Facts, Joint Stipulation of Facts and Issues, Docket, p. 256; Exhibits "A" and "D"

Despite alleged constant and numerous inquiries, the BIR ITAD has yet to issue the confirmation on the income tax exemption of the redemption by petitioner of its preferred shares held by GTRC.[15]

Believing that it is entitled to the refund or issuance of TCC for the amount of ₱14,659,847.10, representing the 15% FWT which was allegedly erroneously and unduly received by the BIR, petitioner filed its application for refund or issuance of TCC in the amount of ₱14,659,847.10 with the Large Taxpayers Audit and Investigation Division (LTAID) I of the BIR on October 21, 2010[16] pursuant to Sections 204 and 229 of the NIRC of 1997, as amended. The administrative claim for refund or issuance of TCC remains pending with the BIR.[17]

On November 3, 2010, petitioner filed with this Court the instant Petition for Review.[18]

In her Answer [19] filed on December 20, 2010, respondent raised the following Special and Affirmative Defenses:

> "4. Petitioner is not entitled to refund or tax credit in the amount of ₱14,659,847.10 representing erroneously withheld and remitted FWT because it failed to submit all necessary and relevant documents pertaining to the above-mentioned amount with respondent during the administrative application for refund or tax credit.
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> 5. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue (BIR).
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> 6. In claims for refund, a claimant must first file a written claim for refund, categorically demanding recovery of overpaid taxes with the CIR, before resorting to an action in court, first, to afford the CIR an

[15] Exhibit "BB"; Page 6, Nos. 19 and 20, Exhibit "GG"
[16] Exhibit "C"
[17] Par. 3, Statement of the Case, Petitioner's Memorandum, Docket, p. 479
[18] Docket, pp. 5 to 16
[19] Docket, pp. 216 to 221

opportunity to correct the action of subordinate officers; and second, to notify the government that such taxes have been questioned, and notice should then be borne in mind in estimating the revenue available for expenditure (Bermejo vs. Collector, 87 Phil 96 cited in CIR vs. Rosemarie Acosta, GR No. 154068, August 3, 2007)

7. In Ang Tibay vs. Court of Industrial Relations GR No. L-46496, it states the primary rights which must be respected even in an administrative proceeding:

> 1) **The first of these rights is the right to a hearing, which includes the right of the party interested or affected to present his own case and submit evidence in support thereof**. In the language of Chief [Justice] Hughes, in *Morgan vs. U.S.*, 304 U.S. 1, 58 S. Ct. 773, 999, 82 Law. ed. 1129, 'the liberty and property of the citizen shall be protected by the rudimentary requirements of fair play.
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> (2) Not only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts but the tribunal *must consider* the evidence presented. (Chief Justice Hughes in Morgan v. U.S. 298 U.S. 468, 56 S. Ct. 906, 80 law. ed. 1288.) In the language of this [C]ourt in *Edwards vs. McCoy*, 22 Phil., 598, 'the right to adduce evidence, without the corresponding duty on the part of the board to consider it, is vain. Such right is conspicuously futile if the person or persons to whom the evidence is presented can thrust it aside without notice or consideration.'
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> (3) 'While the duty to deliberate does not impose the obligation to decide right, it does imply a necessity which cannot be disregarded, namely, that of having something to support it is a nullity, a place when directly attached.' (Edwards vs. McCoy, *supra.*) This principle emanates from the more fundamental is contrary to the vesting of unlimited power anywhere. Law is both against a grant and a limitation upon power.
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> (4) **Not only must there be some evidence to support a finding or conclusion** (City of Manila vs. Agustin, G.R. No. 45844, promulgated November 29, 1937, XXXVI O.G. 1335), **but the**

evidence must be 'substantial.' (Washington, Virginia and Maryland Coach Co. v. [N]ational [L]abor Relations Board, 301 U.S. 142, 147, 57 S. Ct. 648, 650, 81 Law. ed. 965.) It means such relevant evidence as a reasonable mind accept [sic] as adequate to support a conclusion.' (Appalachian Electric Power v. National Labor Relations Board, 4 Cir., 93 F. 2d 985, 989; National Labor Relations Board v. Thompson Products, 6 Cir., 97 F. 2d 13, 15; Ballston-Stillwater Knitting Co. v. National Labor Relations Board, 2 Cir., 98 F. 2d 758, 760.). . . The statute provides that 'the rules of evidence prevailing in courts of law and equity shall not be controlling.' The obvious purpose of this and similar provisions is to free administrative boards from the compulsion of technical rules so that the mere admission of matter which would be deemed incompetent inn [sic] judicial proceedings would not invalidate the administrative order. (Interstate Commerce Commission v. Baird, 194 U.S. 25, 44, 24 S. Ct. 563, 568, 48 Law. Ed. 860; Interstate Commerce Commission vs. Louisville and Nashville R. Co., 277 U.S. 88, 93 33 S. Ct. 185, 187, 57 Law. ed. 431; United States v. Abilene and Southern Ry. Co. S. Ct. 220, 225, 74 Law. ed. 624) But this assurance of a desirable flexibility in administrative procedure does not go far as to justify orders without a basis in evidence having rational probative force. Mere uncorroborated hearsay or rumor does not constitute substantial evidence (Consolidated Edison Co. vs. National Labor Relations Board, 59 S. Ct. 206, 83 Law. ed. No. 4, Adv. Op., p. 131.)'

(5) **The decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected.** (Interstate Commerce Commission vs. L. & N. R. Co., 227 U.S. 88, 33 S. Ct. 185, 57 Law. ed. 431.) **Only by confining the administrative tribunal to the evidence disclosed to the parties, can the latter be protected in their right to know and meet the case against men.** It should not, however, detract from their duty actively to see that the law is enforced, and for that purpose, to use the authorized legal methods of securing evidence and informing itself of facts material and relevant to the controversy. Boards of inquiry may be appointed for the purpose of investigating and determining the

> facts in any given case, but their report and decision are only advisory. (Section 9, Commonwealth Act No. 103.) The Court of Industrial Relations may refer any industrial or agricultural dispute or any matter under its consideration or advisement to a local board of inquiry, a provincial fiscal, a justice of the peace or any public official in any part of the Philippines for investigation, report and recommendation, and may delegate to such board or public official such powers and functions as the said Court of Industrial Relations may deem necessary, but such delegation shall not affect the exercise of the Court itself of any of its powers. (Section 10, *ibid.*)
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> (6) The Court of Industrial Relations or any of its judges, therefore, must act on its own or his own independent consideration of the law and facts of the controversy, and not simply accept the views of a subordinate in arriving at a decision. It may be that the volume of work is such that it is literally Relations personally to decide all controversies coming before them. In the United States the difficulty is solved with the enactment of statutory authority authorizing examiners or other subordinates to render final decision, with the right to appeal to board or commission, but in our case there is no such statutory authority.
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> (7) The Court of Industrial Relations should, in all controversial questions, render its decision in such a manner that the parties to the proceeding can know the various issues involved, and the reasons for the decision rendered. The performance of this duty is inseparable from the authority conferred upon it. (Emphasis supplied)

Petitioner is mandated to present evidence to support its administrative claim and such evidence will be used as basis for the decision of the quasi-judicial body. If there is lack of evidence, then the decision will probably be contrary to petitioner. Only the evidence presented will be reviewed by the quasi-judicial body. An administrative claim is meant to expedite the proceedings where all the relevant evidence is presented.

8. Moreover, in an action for refund the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim for refund/credit. This is because exemptions from taxation

are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from the common burden cannot be permitted to exist upon vague implications **(Asiatic Petroleum Co. vs Llanes, 49 Phil. 466 cited in Collector of Internal Revenue v Manila Jockey Club, Inc., 98 Phil. 670).**

9. Furthermore, petitioner's claim that there is double taxation, but there was no evidence shown that such taxes were paid in the United States of America. A basic principle of claiming relief for double taxation is that one should have paid taxes in another country first. Respondent does not assume that such taxes were even paid in the United States of America.

10. Petition must prove its availment of the tax treaty provision was preceded by an application for tax treaty relief filed with the International Tax Affair [sic] Division."

On February 16, 2011, the Court issued a Notice of Pre-Trial Conference,[20] requiring both parties and their counsels to be present at the pre-trial and to file with the Court and serve on the adverse party their pre-trial briefs. In compliance therewith, respondent submitted her Pre-Trial Brief[21] on March 15, 2011; while petitioner filed its Pre-Trial Brief[22] on March 28, 2011.

During the Pre-Trial Conference held on March 31, 2011, upon joint motion of the parties' respective counsels, the Court gave the parties a period of fifteen (15) days from March 31, 2011 or until April 15, 2011 within which to submit their Joint Stipulation of Facts and Issues.[23]

On April 6, 2011, the parties submitted their Joint Stipulation of Facts and Issues.[24] Subsequently, the Court issued a Resolution[25] dated April 8, 2011 approving the parties' Joint Stipulation of Facts and Issues, holding that

[20] Docket, p. 229
[21] Docket, pp. 230 to 232
[22] Docket, pp. 234 to 247
[23] Minutes of the Pre-Trial Conference, Docket, p. 251
[24] Docket, pp. 252 to 258
[25] Docket, p. 260

the pre-trial is deemed terminated, and ordering the parties to proceed with the trial on the merits.

During trial, petitioner presented its lone witness in the person Mr. Reynante C. Del Rosario.

On August 12, 2011, petitoner filed its Formal Offer of Evidence, offering Exhibits "A" to "GG-1". In a Resolution dated September 14, 2011, this Court resolved to admit Exhibits "A" to "GG", inclusive of their sub-markings. Thereafter, petitioner was deemed to have formally rested its case.

The documentary evidence formally offered and admitted are as follows:

Exhibits	Description
A	Bureau of Internal Revenue (BIR) Certification dated 26 October 2010 confirming collection from Petitioner on 3 November 2008 of the amount of ₱ 14,659,847.10 as final withholding tax. (1 page)
A-1	Signature above the name Geraldine S. Bermas, Chief, Revenue Accounting Division ("RAD"), on Exhibit "A".
B	Letter of Petitioner to the BIR RAD, received by the latter on 21 October 2010, requesting for a certified copy of the BIR Form No. 1601-F for the month of October 2008 in the amount of ₱ 14,659,847.10 and certification of the payment made by Petitioner on 3 November 2008. (2 pages)
B-1	Signature above the name Reynante C. Del Rosario on the second page of Exhibit "B".
C	Letter of SGV & Co. to the BIR, received by the latter on 21 October 2010, which constitutes the administrative claim for refund of the erroneously paid final withholding tax in the amount of

	₱14,659,847.10 for October 2008, with all stated attachments marked as Annexes "A" to "I". (172 pages)
C-1	Signature above the name Wilfredo U. Villanueva on page 14 of Exhibit C.
C-2	Application for Tax Credits/Refunds (BIR Form 1914) filed with the BIR on 21 October 2010. (1 page)
C-3	Signature above the name Reynante C. Del Rosario on Exhibit "C-1"
D	Original computer printout of BIR Form 1601-F for the month of October 2008 filed on 3 November 2008 with EFPS reference number 200800002546498. (1 page)
E	Securities and Exchange Commission ("SEC")-certified machine copy of the Certificate of Filing of Amended Articles of Incorporation of Goodyear Philippines, Inc. issued on 1 March 1995. (14 pages)
E-1	Article four (4) of the Amended Articles of Incorporation of Goodyear Philippines, Inc. indicating that the term of existence of Goodyear Philippines, Inc. is 50 years from 26 September 1995 on page 6 of Exhibit "E".
E-2	SEC certification at the back of the last page of Exhibit "E" that he latter is a true and correct machine copy of the official files in the custody of the SEC with signature above the name Leodegaria E. Canlapan, PSRU Specialist III, Central Receiving and Records Division.
F	SEC Certificate of Increase of Capital Stock issued to Goodyear Philippines, Inc. on 19 August 2003. (11 pages)
F-1	Paragraphs 1 to 4, page 4 of the Certificate of Increase of the Authorized Capital Stock attached to the SEC Certificate of Increase of Capital Stock issued to Goodyear Philippines, Inc. on 19 August 2003 stating the rights and privileges of preferred stock.

F-2	Treasurer's Affidavit attached in page 10 of Exhibit "F".
F-3	SEC certification at the back of the last page of Exhibit "F" that the latter is a true and correct machine copy of the official files in the custody of the SEC with signature above the name Leodegaria E. Canlapan, PSRU Specialist III, Central Receiving and Records Division.
G	General Information Sheet of Goodyear Philippines, Inc. for the year ended 31 December 2007. (7 pages)
G-1	Page 4 of Exhibit "G" which contains the information on stockholders of Goodyear Philippines, Inc.
G-2	Item number 5, page 6 of Exhibit "G" which states that there were no dividends declared during the immediately preceding year.
G-3	SEC certification at the back of the last page of Exhibit "G" that the latter is a true and correct machine copy of the official files in the custody of the SEC with signature above the name Leodegaria E. Canlapan. PSRU Specialist III, Central Receiving and Records Division.
H	Audited financial statements ("AFS") of Goodyear Philippines, Inc. for the year ended 31 December 2009. (52 pages)
H-1	Signature above the name Gina S. Detera on page 8 of Exhibit "H".
H-2	Balance sheets of Goodyear Philippines, Inc. on page 9 of Exhibit H.
H-3	Statement of changes in equity of Goodyear Philippines, Inc. on page 11 of Exhibit "H"
H-4	Note 9 – Property, plant and equipment on page 34 of Exhibit "H"
H-5	Note 18 – share capital on page 43 of Exhibit "H"

H-6	SEC certification at the back of the last page of Exhibit "H" that the latter is a true and correct machine copy of the official files in the custody of the SEC with signature above the name Leodegaria E. Canlapan, PSRU Specialist III, Central Receiving and Records Division
I	AFS of Goodyear Philippines, Inc. for the year ended 31 December 2008. (50 pages)
I-1	Signature above the name Gina S. Detera on page 4 of Exhibit "I"
I-2	Balance sheets of Goodyear Philippines, Inc. on page 6 of Exhibit "I"
I-3	Statement of changes in equity of Goodyear Philippines, Inc. on page 8 of Exhibit "I"
I-4	Note 10 – Property, plant and equipment on page 32 of Exhibit "I"
I-5	Note 18 – share capital on pages 40 to 41 of Exhibit "I"
I-6	SEC certification at the back of the last page of Exhibit "I" that the latter is a true and correct machine copy of the official files in the custody of the SEC with signature above the name Leodegaria E. Canlapan, PSRU Specialist III, Central Receiving and Records Division.
J	AFS of Goodyear Philippines, Inc. for the year ended 31 December 2004. (28 pages: 6 pages for income statements/balance sheets and 22 pages for notes to financial statements)
J-1	Signature on page 1 of Exhibit "J"
J-2	Balance sheets of Goodyear Philippines, Inc. on page 3 of Exhibit "J"
J-3	Statement of changes in equity of Goodyear Philippines, Inc. on page 5 of Exhibit "J"

J-4	Note 1 – Organization and operations on page 1 of the notes to financial statements of Exhibit "J"
J-5	Note 6 – Property, plant and equipment on page 11 of the notes to financial statements of Exhibit "J"
J-6	Note 12 – Capital stock on page 17 to 18 of the notes to financial statements of Exhibit "J"
K	AFS of Goodyear Philippines, Inc. for the year ended 31 December 2005. (39 pages: 6 pages for income statement/balance sheets and 33 pages for notes to financial statements)
K-1	Signature on page 1 of Exhibit "K"
K-2	Balance sheets of Goodyear Philippines, Inc on page 3 of Exhibit "K"
K-3	Statement of changes in equity of Goodyear Philippines, Inc. on page 5 of Exhibit "K"
K-4	Note 1 – General information on page 1 of the notes to financial statements of Exhibit "K"
K-5	Note 11 – Property, plant and equipment on page 22 of the notes to financial statements of Exhibit "K"
K-6	Note 16 – Share capital on page 27 of the notes to financial statements of Exhibit "K"
L	AFS of Goodyear Philippines, Inc. for the year ended 31 December 2006. (39 pages: 7 pages for income statement/balance sheets and 32 pages for notes to financial statements)
L-1	Signature on page 3 of Exhibit "L"
L-2	Balance sheets of Goodyear Philippines, Inc. on page 4 of Exhibit "L"
L-3	Statement of changes in equity of Goodyear Philippines, Inc. on page 6 of Exhibit "L"

L-4	Note 1 – General information on page 1 of the notes to financial statements of Exhibit "L"
L-5	Note 10 – Property, plant and equipment on page 20 of the notes financial statements of Exhibit "L"
L-6	Note 16 – Share capital on page 26 of the notes to financial statements of Exhibit "L"
M	Audited financial statements of Goodyear Philippines, Inc. for the year ended 31 December 2007. (49 pages: 10 pages for income statement/balance sheets and 39 pages for notes to financial statements)
M-1	Signature above the name Wilfredo S. Madarang on page 4 of Exhibit "M"
M-2	Balance sheets of Goodyear Philippines, Inc. on page 7 of Exhibit "M"
M-3	Statement of changes in equity of Goodyear Philippines, Inc. on page 9 of Exhibit "M"
M-4	Note 1 – General information on page 1 of the notes to financial statements of Exhibit "M"
M-5	Note 10 – Property, plant and equipment on page 21 of the notes to financial statements of Exhibit "M"
M-6	Note 18 – Share capital on page 30 of the notes to financial statements of Exhibit "M"
N	General Information Sheet of Goodyear Philippines, Inc. for the year ended 31 December 2008. (8 pages)
N-1	Page 4 of Exhibit "N" which contains the information on stockholders of Goodyear Philippines, Inc.
N-2	Item number 5, page 7 of Exhibit "N" which states that there were no dividends declared during the immediately preceding year.

N-3	Signature of Mr. Jose Lis C. Leagogo on page 8 of Exhibit "N"
O	General Information Sheet of Goodyear Philippines, Inc. for the year ended 31 December 2009. (8 pages)
O-1	Page 4 of Exhibit "O" which contains the information on stockholders of Goodyear Philippines, Inc.
O-2	Item number 5, page 6 of Exhibit "O" which states that there were no dividends declared during the immediately preceding year.
O-3	Signature of Ms. Jocelyn Esguerra-Dee on page 7 of Exhibit "O"
P	General Information Sheet of Goodyear Philippines, Inc. for the year ended 31 December 2003. (7 pages)
P-1	Page 5 of Exhibit "P" which contains the information on stockholders of Goodyear Philippines, Inc.
P-2	Item letter E, page 7 of Exhibit "P" which indicates zero or nil dividends declared during the immediately preceding year.
P-3	SEC certification at the back of the last page of Exhibit "P" that the latter is a true and correct machine copy of the official files in the custody of the SEC with signature above the name Leodegaria E. Canlapan, PSRU Specialist III, Central Receiving and Records Division
Q	General Information Sheet of Goodyear Philippines, Inc. for the year ended 31 December 2004. (7 pages)
Q-1	Page 5 of Exhibit "Q" which contains the information on stockholders of Goodyear Philippines, Inc.
Q-2	Item letter E, page 6 of Exhibit "Q" which indicates zero or nil dividends declared during the immediately preceding year.

Q-3	SEC certification at the back of the last page of Exhibit "Q" that the latter is a true and correct machine copy of the official files in the custody of the SEC with signature above the name Leodegaria E. Canlapan, PSRU Specialist III, Central Receiving and Records Division.
R	General Information Sheet of Goodyear Philippines, Inc. for the year ended 31 December 2005. (7 pages)
R-1	Page 5 of Exhibit "R" which contains the information on stockholders of Goodyear Philippines, Inc.
R-2	Item letter E, page 6 of Exhibit "R" which indicates zero or nil dividends declared during the immediately preceding year
R-3	SEC certification at the back of the last page of Exhibit "R" that the latter is a true and correct machine copy of the official files in the custody of the SEC with signature above the name Leodegaria E. Canlapan, PSRU Specialist III, Central Receiving and Records Division
S	General Information Sheet of Goodyear Philippines, Inc. for the year ended 31 December 2006. (7 pages)
S-1	Page 4 of Exhibit "S" which contains the information on stockholders of Goodyear Philippines, Inc.
S-2	Item number 5, page 6 of Exhibit "S" which indicates that no dividends were declared during the immediately preceding year.
S-3	SEC certification at the back of the last page of Exhibit "S" that the latter is a true and correct machine copy of the official files in the custody of the SEC with signature above the name Leodegaria E. Canlapan, PSRU Specialist III, Central Receiving and Records Division

T	Goodyear Philippines, Inc.'s computation of redemption price of preferred shares. (1 page)
T-1	Signatures above the names Marilou F. Rodas and Reynante C. Del Rosario on Exhibit "T"
U	Unaudited financial statements of Goodyear Philippines, Inc. for the period January 2008 to September 2008. (16 pages)
U-1	Signature above the name Ms. Marilou F. Rodas on page 16 of Exhibit "U"
V	Letter of SGV & Co. filed with the Bureau of Internal Revenue on 15 October 2008 requesting for confirmation of the tax consequences of the partial redemption of redeemable preferred shares. (9 pages)
V-1	Signature above the name W. U. Villanueva on page 9 of Exhibit "V"
W	Application for Relief from Double Taxation (BIR Form No. 1928) with original BIR stamp of receipt dated 15 October 2008. (2 pages)
W-1	Signature on page 2 of Exhibit "W", to the right of the name W. U. Villanueva, Principal, Tax Services, SGV & Co.
X	Secretary's Certificate executed by Mr. Jose Lis C. Leagogo dated 30 June 2008. (2 pages)
X-1	Signature above the name Jose Lis C. Leagogo on the second page of Exhibit "X"
Y	Certification from the United States Department of Treasury that Goodyear Tire and Rubber Company is a resident of the United States for purposes of US taxation. (1 page)
Z	Secretary's Certificate showing the number and value of shares of Goodyear Philippines, Inc. and Goodyear Tire and Rubber Company's percentage of ownership in Goodyear Philippines, Inc. (1 page)

AA	Special Power of Attorney authorizing SGV & Co. to file the request for ruling with the Bureau of Internal Revenue. (1 page)
AA-1	Signature above the name Reynante C. Del Rosario on Exhibit "AA"
BB	Letter of SGV & Co. dated 11 June 2009 filed with the Bureau of Internal Revenue on 15 June 2009. (17 pages)
BB-1	Signature above the name W. U. Villanueva on page 17 of Exhibit "BB"
BB-2	Westlaw print out of the case of Cummins Diesel Sales Corp. vs. United States of America, 323 F. Supp. 1114 and labelled as Annex "A". (6 pages)
BB-3	Westlaw print out of the case of Cummins Diesel Sales Corp. vs. United States of America, 459 F. 2d 668 and labelled as Annex "B". (1 page)
CC	Judicial Affidavit of Mr. Reynante C. Del Rosario executed on 17 May 2011.
CC-1	Signature above the name Reynante C. Del Rosario on page 8 of Exhibit "CC"
DD	Certification of Non-Registration of Company issued by the Securities and Exchange Commission dated 28 June 2011.
EE	Computer printout of the Annual Report of The Goodyear Tire and Rubber Company for 2008 posted in The Goodyear Tire and Rubber Company's website with the words "Computer printout by: REYNANTE C. DEL ROSARIO" and the same signatures above the name REYNANTE C. DEL ROSARIO on each page. (107 pages)
EE-1	"Financial Overview" portion of the Annual Report of The Goodyear Tire and Rubber Company for 2008 (page 1) showing net loss in 2008 in the amount of US$77,000,000.00
EE-2	"Consolidated Statements of Operations" portion of the Annual Report of The Goodyear

	Tire and Rubber Company for 2008 in the amount of US$77,000,000.00
FF-1	Screen shot of The Goodyear Tire and Rubber Company website showing the covers of the Annual Reports, including the 2008 Annual Report, with the words "Computer printout by: REYNANTE C. DEL ROSARIO" and a signature above the name REYNANTE C. DEL ROSARIO.
FF-2	Screen shot of The Goodyear Tire and Rubber Company website showing the cover of the 2008 Annual Report, with the words "Computer printout by: REYNANTE C. DEL ROSARIO" and a signature above the name REYNANTE C. DEL ROSARIO.
FF-3	Screen shot of The Goodyear Tire and Rubber Company website with a brief description of The Goodyear Tire and Rubber Company's business as well as an explanation of the cover of the 2008 Annual Report and the words "Computer printout by: REYNANTE C. DEL ROSARIO " and a signature above the name REYNANTE C. DEL ROSARIO.
FF-4	Screen shot of The Goodyear Tire and Rubber Company website showing the Financial Overview portion of the 2008 Annual Report, including net loss amounting to US$77,000,000.00, and the Table of Contents.
GG	Judicial Affidavit of Mr. Reynante C. Del Rosario executed on 8 July 2011.
GG-1	Signature of Mr. Reynante C. Del Rosario on Exhibit "GG".

Respondent then presented her lone witness in the person of Mr. William F. Sundiam.

On November 10, 2011, respondent filed her Formal Offer of Evidence, offering Exhibits "1", to "7-a". On January 02, 2012, this Court resolved to admit said exhibits.

Thereafter, respondent was deemed to have formally rested her case.

Respondent's documentary evidence are as follows:

Exhibit	Description
1	Letter of Authority No. 000033748
2	Memorandum of Assignment No. LOA-116-2011-412
3	Memorandum of Assignment No. LOA-116-2011-699
4	Progress Report dated September 28, 2011
5	3rd Final Notice for Presentation of Records dated October 3, 2011
6	Notice of Requirements
7	Judicial Affidavit of William F. Sundiam
8	Signature of William F. Sundiam

On June 19, 2012,[26] the case was submitted for decision taking into consideration petitioner's Memorandum[27] filed on June 11, 2012 and respondent's Manifestation[28] filed on April 27, 2012, stating that respondent is adopting the arguments in her Memorandum[29] filed on February 3, 2012 as her Memorandum in this case.

The issues[30] stipulated by the parties for this Court's resolution are as follows:

"A. WHETHER OR NOT PETITIONER COMPLIED WITH THE REQUIREMENTS OF SECTIONS 204

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[26] Resolution dated June 19, 2012, Docket, p. 516
[27] Docket, pp. 478 to 515
[28] Docket, p. 470
[29] Docket, pp. 402 to 408
[30] Docket, pp. 256 to 257

AND 229 OF THE 1997 TAX CODE FOR CLAIMS FOR REFUND/ISSUANCE OF TCC

B. WHETHER OR NOT PETITIONER HAS EXHAUSTED ALL ADMINISTRATIVE REMEDIES BEFORE FILING THIS PETITION FOR REVIEW

C. WHETHER OR NOT THE REDEMPTION OF 3,729,216 PREFERRED SHARES HELD BY GTRC IN GOODYEAR PHILIPPINES, INC. IS SUBJECT TO FWT

D. WHETHER OR NOT PETITIONER IS ENTITLED TO ITS CLAIM FOR REFUND/ISSUANCE OF TCC IN THE AMOUNT OF ₱14,659,847.10 REPRESENTING FWT WITHHELD ON 3 NOVEMBER 2008"

Sections 204(C) and 229 of the NIRC of 1997, as amended, provide:

"SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* — The Commissioner may —

xxx xxx xxx

(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 purchaser, 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 files 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."

"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, 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 not such tax, penalty, or sum has been paid under protest or duress.
>
> 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."

The Supreme Court has consistently ruled that a claim for refund or credit with the BIR and the subsequent appeal to this Court must be filed within two (2) years from the date of payment of the tax.[31] Thus, petitioner has 2 years from the date of payment or remittance to the BIR of the 15% FWT within which to file both its administrative and judicial claims for refund.

As borne by the records of this case, petitioner filed its Monthly Remittance Return of Final Income Taxes Withheld (BIR Form 1601-F)[32], evidencing remittance by petitioner to the BIR of the 15% FWT in the amount of ₱14,659,847.10 on November 3, 2008. On October 21, 2010, petitioner filed an administrative claim for refund/issuance of TCC[33], representing the 15% FWT in the amount of ₱14,659,847.10, with the BIR. On November 3, 2010, petitioner filed the instant Petition for Review.

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[31] *Commissioner of Internal Revenue vs. Victorias Milling Co., Inc. and the Court of Tax Appeals,* G.R. No. L-24108, January 3, 1968; *Collector of Internal Revenue vs. J.N. Sweeney, A.O. Baigrie, and Ramon Burgas,* G.R. No. L-12178, August 21, 1959; *P.J. Kiener Company, Ltd., vs. Saturnino David,* G.R. No. L-5163, April 22, 1953

[32] Par. 3, Joint Stipulation of Facts, Joint Stipulation of Facts and Issues, Docket, p. 256; Exhibits "A" and "D"

[33] Exhibit "C"

Based on the above factual findings, both the administrative and the judicial claims for refund were made within the two-year prescriptive period, in compliance with the requirements set forth under Sections 204(C) and 229 of the NIRC of 1997, as amended.

Respondent argues that petitioner is not entitled to a refund or issuance of TCC in the amount of ₱14,659,847.10, representing the alleged erroneously withheld and remitted 15% FWT, because petitioner failed to submit all the necessary and relevant documents with the BIR in support of its administrative claim for a refund. Respondent's witness, Revenue Officer William F. Sundiam, claims that petitioner still has to submit the required documents as of October 3, 2011, in order to complete the investigation. Respondent contends that petitioner is mandated to present evidence in support of its administrative claim and such evidence will be used as basis for the decision of the BIR.

On the other hand, petitioner contends that respondent's claim that petitioner still has to submit the required documents as of October 3, 2011 in order to complete the investigation is erroneous and misleading. To dispute respondent's claim, petitioner presented the letter of SGV & Co. to the BIR[34], which constitutes the administrative claim for refund/issuance of TCC representing the unduly remitted 15% FWT in the amount of ₱14,659,847.10 and which shows that supporting documents were likewise submitted to the BIR. Petitioner asserts that from the filing of the administrative claim for refund/issuance of TCC with the BIR on October 21, 2010 until the date set for initial presentation of respondent's evidence on September 14, 2011, the BIR did not act on petitioner's claim. Petitioner cited the progress report of Revenue Officer Sundiam dated September 28, 2011[35], which states that factual audit/verification has yet to be conducted on petitioner's claim for refund as of the date of the execution of said letter. Petitioner further argues that the first time the BIR required

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[34] Exhibit "C"
[35] Exhibit "4"; Transcript of Stenographic Notes (TSN), November 9, 2011, pp. 11 to 12

petitioner to submit additional documents in support of its claim for refund/issuance of TCC was when respondent sent on October 17, 2011 its letter dated October 10, 2011[36] to petitioner. Petitioner asseverates that it submitted to the BIR the documents required in said letter as evidenced by petitioner's letters to the BIR dated October 27, 2011[37], March 6, 2012[38], and March 7, 2012[39].

The doctrine of exhaustion of administrative remedies is a cornerstone of our judicial system. The thrust of the rule is that courts must allow administrative agencies to carry out their functions and discharge their responsibilities within the specialized areas of their respective competence. The rationale for this doctrine is obvious. It entails lesser expenses and provides for the speedier resolution of controversies. Comity and convenience also impel courts of justice to shy away from a dispute until the system of administrative redress has been completed.[40]

However, the doctrine of exhaustion of administrative remedies is not an iron-clad rule[41] as there are a number of instances when such doctrine may be dispensed with and judicial action may be validly resorted to immediately,[42] such as when there is an urgent need for judicial intervention,[43] and when irreparable damage will be suffered.[44] c

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[36] Exhibit "6"; TSN, November 9, 2011, pp. 13 to 14
[37] Exhibit "HH", Docket, p. 435
[38] Exhibit "JJ", Docket, p. 453
[39] Exhibit "KK", Docket, p. 454
[40] *Universal Robina Corp. (Corn Division) vs. Lagunal Lake Development Authority,* G.R. No. 191427, May 30, 2011 citing *Caballes vs. Perez-Sison,* G.R. No. 131759, March 23, 2004, 426 SCRA 98 and *Estrada vs. Court of Appeals,* G.R. No. 137862, November 11, 2004, 442 SCRA 117
[41] *Gualberto Castro vs. Honorable Secretary Ricardo Gloria in his capacity as Secretary of the Department of Education, Culture and Sports,* G.R. No. 132174, August 20, 2001
[42] *Sunville Timber Products, Inc. vs. Hon. Alfonso G. Abad, as Judge RTC, Br. 22 of Pagadian City, et. al.,* G.R. No. 85502, February 24, 1992
[43] *Santiago Aquino, et. al., vs. Hon. Guillermo R. Luntok, Presiding Judge, Regional Trial Court, Branch XXIX, Libmanan, Camarines Sur and Ludovico B. Peralta,* G.R. No. 84324, April 5, 1990
[44] *Vicente de Lara, Jr. et. al., vs. Gaudencio Cloribel, et. al.,* G.R. No. L-21653, May 31, 1965

In the instant case, petitioner was able to establish that it indeed submitted documents in support of its claim for a refund. However, since respondent has not yet issued a decision on petitioner's administrative claim for refund/issuance of TCC and in order to preserve petitioner's right to judicially claim for the refund/issuance of TCC, petitioner was constrained to file the instant Petition for Review. Petitioner has done so in compliance with the specific mandate of Section 229 of the NIRC of 1997, as amended, wherein it is specifically stated that "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."

In the case of **College of Oral and Dental Surgery vs. Court of Tax Appeals, *et al.***,[45] the Supreme Court emphasized that in claims for refund under Section 306 of the old NIRC (now Section 229 of the NIRC of 1997, as amended), the proceeding in court must be instituted within two years after the payment of the tax regardless of the pendency of the administrative claim, to wit:

> "This Court, construing the aforequoted provision of law (referring to then Section 306 of the old NIRC, now Section 229 of the NIRC of 1997) in an identical case, made the pronouncement that **although the filing of the claim with the Collector of Internal Revenue is intended as a notice to said official that unless the tax or penalty alleged to have been erroneously or illegally collected is refunded court action will follow, this does not imply that the taxpayer must wait for the action of the Collector before bringing the matter to court** (P.J. Kiener Co., Ltd. vs. David, 92 Phil. 945, penned by Mr. Justice Pedro Tuason). Indeed, it must be observed that under said provisions, **the taxpayer's failure to comply with the requirement regarding the institution of the action or proceeding in court within 2 years after the payment of the taxes bars him from the recovery of the same, irrespective of whether a claim for the refund of such taxes filed with the Collector of Internal Revenue is still pending action of the latter**." *(Emphasis supplied)*c

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[45] G.R. No. L-10446, January 28, 1958

Based on the foregoing, if petitioner did not file the instant judicial claim for refund on November 3, 2010, and instead opted to wait for the final action of respondent on its claim for refund/issuance of TCC, knowing fully well that the two-year prescriptive period is about to end, petitioner loses its right to seek judicial redress and consequently, suffer irreparable damage as it loses its right to recover the refund being claimed. Thus, in the instant case, it was appropriate to dispense with the requirement to exhaust administrative remedies since judicial intervention was necessary to preserve petitioner's right and to prevent irreparable damage to petitioner.

It is well-settled that administrative issuances, such as those issued by the BIR, have the force and effect of law.[46] These administrative issuances benefit from the same presumption of validity and constitutionality enjoyed by statutes.[47]

On January 4, 2000, the BIR issued Revenue Memorandum Order (RMO) No. 1-2000, which provides that any availment of tax treaty relief should be preceded by an application filed with the BIR's ITAD at least fifteen (15) days before the transaction or payment. Said RMO No. 1-2000 expressly provides:

> "2. Any availment of the tax treaty relief shall be preceded by an application by filing BIR Form No. 0901 (Application for Relief from Double Taxation) with ITAD **at least 15 days before the transaction i.e., payment of dividends, royalties, etc., accompanied by supporting documents justifying the relief**. xxx" *(Emphasis supplied)*

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[46] *Chevron Philippines, Inc. (Formerly Caltex Philippines, Inc.) vs. Bases Conversion Development Authority and Clark Development Corporation,* G.R. No. 173863, September 15, 2010, citing *Mirasol vs. Department of Public Works and Highways,* G.R. No. 158793, June 8, 2006, 490 SCRA 318, 347, citing *Eslao vs. Commission on Audit,* G.R. No. 108310, September 1, 1994, 236 SCRA 161, 175
[47] *Id.*

RMO No. 1-2000 also states the objectives for the requirement to file a prior application for treaty relief, to wit:

> "This Order is issued to streamline the processing of the tax treaty relief application in order to improve efficiency and service to the taxpayers.
>
> Furthermore, it is to the best interest of both the taxpayer and the Bureau of Internal Revenue that any availment of the tax treaty provisions be preceded by an application for treaty relief with the International Tax Affairs Division (ITAD). In this way, **the consequences of any erroneous interpretation and/or application of the treaty provisions (i.e., claim for tax refund/credit for overpayment of taxes, or deficiency tax liabilities for underpayment) can be averted before proceeding with the transaction and or paying the tax liability covered by the tax treaty**." *(Emphasis supplied)*

It is clear from RMO No. 1-2000 that an application for treaty relief must be filed with the BIR's ITAD prior to any availment of tax treaty relief provisions to avoid the consequences of any erroneous interpretation and/or application of treaty provisions prior to the transaction and/or payment of tax liability covered by a tax treaty.

In the instant case, records reveal that petitioner's Board of Directors held a meeting on May 30, 2008, during which the redemption on October 15, 2008 of 3,729,216 preferred shares issued by petitioner to GTRC was authorized;[48] that the payment of the Redemption Price was scheduled on November 15, 2008;[49] that petitioner remitted the 15% FWT in the amount of ₱14,659,847.10 to the BIR on November 3, 2008;[50] that petitioner and GTRC jointly filed the Application for Relief from Double Taxation (BIR Form No. 1928) with the BIR's ITAD on October 15, 2008;[51] and that despite constant follow-ups, no ruling has been

[48] Exhibit "X"
[49] *Id.*
[50] Par. 3, Joint Stipulation of Facts, Joint Stipulation of Facts and Issues, Docket p. 256; Exhibits "A" and "D"
[51] Exhibit "W"

issued by the BIR's ITAD on petitioner's and GTRC's joint application for tax treaty relief.[52]

Petitioner filed said application for tax treaty relief nineteen (19) days prior to the remittance of the 15% FWT to the BIR on November 3, 2008 and thirty one (31) days prior to the scheduled date of payment of the Redemption Price on November 15, 2008. Undoubtedly, petitioner has sufficiently complied with the requirement under RMO No. 1-2000 on the filing of a prior application for tax treaty relief not later than fifteen (15) days prior to the transaction or payment.

As borne by the records of this case, GTRC owns 13,318,630 preferred shares of petitioner, which were subscribed by GTRC at a par value of ₱100.00 per share.[53] Said preferred shares have the following rights, privileges, and restrictions:

> "1) The holders of Preferred Shares shall be entitled to and paid a yearly cumulative dividend at the rate of five percent (5%) per annum, and no more, payable semi-annually, commencing on One Hundred Eighty (180) days from the date of subscription and payment in full of the Preferred Shares thereof.
>
> 2) Preferred Shares and all accrued and unpaid dividends, if any, to which they are entitled, shall have a First (1st) lien on the assets of the Corporation. In the event of liquidation or dissolution or winding up, whether voluntary or involuntary, of the Corporation, the holders of Preferred Shares shall be entitled to be paid in full both the par amount of their shares and any unpaid dividends accrued thereon, before any amount shall be paid to the holders of other stock.
>
> 3) Preferred Shares shall not be convertible into Common Stock.

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[52] Exhibit "BB"
[53] Exhibit "F-2"

4) Each and every certificate of Preferred Shares shall be subject to redemption, and may at the option of the Board of Directors, regardless of the existence of unrestricted retained earnings in the books of the Corporation, or any semi-annual dividend date at any time after one (1) year from the date of the issuance of such certificate, be called and retired at the price of One Hundred (₱100.00) for each share and the amount of dividends accrued and unpaid at the date of the redemption."[54]

The 3,729,216 preferred shares issued to GTRC were redeemed by petitioner at the total Redemption Price of ₱470,653,914.00.[55] The total Redemption Price in the amount of ₱470,653,914.00 is broken down as follows:[56]

Aggregate Par Value (₱100.00 per share x 3,729,216 shares)	₱ 372,921,600.00
Accrued and unpaid dividends	97,732,314.00
Redemption Price	**₱ 470,653,914.00**

Upon redemption, the 3,729,216 preferred shares were reclassified as Treasury Shares and were reflected as such in the books of petitioner.[57] The Board of Directors of petitioner resolved that capital stock of petitioner shall be reduced by an amount equivalent to the par value of the redeemed preferred shares only after the complete redemption by petitioner of all its 13,318,630 preferred shares issued to GTRC.[58]

The issue now is whether the redemption of said 3,729,216 preferred shares issued to GTRC is subject to Philippine income tax on the difference between the Redemption Price and GTRC's total cost of acquisition of the shares redeemed (which is also equivalent to their aggregate par value), computed as follows:

Redemption Price	₱ 470,653,914.00
Aggregate Par Value/Total Cost of	372,921,600.00

[54] Exhibit "F-1"
[55] Exhibit "X"
[56] Exhibit "T"
[57] Exhibits "H-2", "H-3", "I-2" and "I-3"
[58] Exhibit "X"

Acquisition (₱100.00 per share x 3,729,216 shares)	
Difference	97,732,314.00
15% FWT	**₱ 14,659,847.10**

Redemption is repurchase, a reacquisition of stock by a corporation which issued the stock in exchange for property, whether or not the acquired stock is cancelled, retired or held in the treasury.[59]

In Revenue Regulations (RR) No. 006-08[60] dated April 22, 2008, the BIR consolidated the rules on the taxation of shares redeemed for cancellation or retirement or when the same are treated as treasury shares, to wit:

> "SECTION 9. *Taxation of Shares Redeemed for Cancellation or Retirement.* — When preferred shares are redeemed at a time when the issuing corporation is still in its 'going-concern' and is not contemplating in dissolving or liquidating its assets and liabilities, **capital gain or capital loss upon redemption shall be recognized on the basis of the difference between the amount/value received at the time of redemption and the cost of the preferred shares**.
>
> Similarly, the capital gain or loss derived shall be subject to the regular income tax rates imposed under the Tax Code, as amended, on individual taxpayers or to the corporate income tax rate, in case of corporations.
>
> **This section, however, does not cover situations where a corporation voluntarily buys back its own shares, in which it becomes treasury shares**. In such cases, the stock transaction tax under Sec. 127 (A) of the Tax Code shall apply if the shares are listed and executed through the trading system and/or facilities of the Local Stock Exchange. Otherwise, **if the shares are not listed and traded through the**

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[59] *Commissioner of Internal Revenue vs. The Court of Appeals, et. al.,* G.R. No. 108576, January 20, 1999 citing West Tax Law Dictionary, 1993 ed., p. 691; *Seda vs. Commissioner of Internal Revenue,* 82 T.C. 484 (1984) and 33A Am Jur 2d, Federal Taxation (1995) Par. 4852; *Income Tax Techniques,* J.K. Lasser Institute, vol. IV, Chapter 11, 11.02

[60] Consolidated Regulations Prescribing the Rules on the Taxation of Sale, Barter, Exchange or Other Disposition of Shares of Stock Held as Capital Assets

> **Local Stock Exchange, it is subject to the 5% and 10% net capital gains tax**." *(Emphasis supplied)*

Hence, in general, when preferred shares are redeemed and classified as treasury shares in the books of the issuing corporation, pursuant to RR No. 006-08, the net capital gain derived from the redemption of the preferred shares is generally subject to the 5% and 10% capital gains tax. In the case of a nonresident foreign corporation, the net capital gain shall generally be subject to the capital gains tax imposed under Section 28(B)(5)(c) of the NIRC of 1997, as amended, which is quoted hereunder:

> "SEC. 28. *Rates of Income Tax on Foreign Corporations*.-
>
> xxx xxx xxx
>
> (B) *Tax on Nonresident Foreign Corporation*. –
>
> *(1) In General*. – Except as otherwise provided in this Code, a foreign corporation not engaged in trade or business in the Philippines shall pay a tax equal to thirty-five percent (35%) of the gross income received during each taxable year from all sources within the Philippines, such as interests, dividends, rents, royalties, salaries, premiums (except reinsurance premiums), annuities, emoluments or other fixed or determinable annual, periodic or casual gains, profits and income and capital gains, **except capital gains subject to tax under subparagraphs 5(C):** *Provided*, That effective January 1, 2009, the rate of income tax shall be thirty percent (30%).
>
> xxx xxx xxx
>
> (5) *Tax on Certain Incomes Received by a Nonresident Foreign Corporation*.
>
> xxx xxx 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 ₱100,000. 5%
>
> On any amount in excess of ₱100,000 . . . . 10%." *(Emphasis supplied)*

However, in the instant case, since GTRC is a resident of the US, the provisions of the RP-US Tax Treaty shall also apply in determining the Philippine income taxation of the net capital gain that GTRC derived on the redemption by petitioner of its 3,729,216 preferred shares, which were reclassified as treasury shares in the books of petitioner.

Article 14 of the RP-US Tax Treaty provides as follow:

> **"Article 14**
> **CAPITAL GAINS**
>
> (1) Gains from the alienation of tangible personal (movable) property forming part of the business property of a permanent establishment which a resident of a Contracting State has in the other Contracting State or of tangible personal (movable) property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in the other State. However, gains derived by a resident of a Contracting State from the alienation of ships, aircraft or containers operated by such resident in international traffic shall be taxable only in that State, and gains described in Article 13 (Royalties) shall be taxable only in accordance with the provisions of Article 13.
>
> **(2) Gains from the alienation of any property other than those mentioned in paragraph (1) or in Article 7 (Income From Real Property) shall be taxable only in the Contracting State of which the alienator is a resident.**" *(Emphasis supplied)*

Furthermore, the Reservation Clause of the same Treaty provides, in part, as follows:

"**Article 1**

> Notwithstanding the provisions of Article 14 of the Convention relating to capital gains, **both the Philippines and the United States may tax gain from the disposition of an interest in a corporation if its assets consist principally of a real property interest located in that country**. Likewise, both countries may tax gain from the disposition of an interest in a partnership, trust or estate to the extent the gain is attributable to a real property interest in one of the countries. **The term 'real property interest' is to have the meaning it has under the law of the country in which the underlying real property is located**." *(Emphasis supplied)*

Therefore, any gain that may be derived by a resident of the US from the alienation of its properties, other than those mentioned in paragraph (1) of Article 14 of the RP-US Tax Treaty, shall be taxable only in the US. However, under the Reservation Clause of the RP-US Tax Treaty, the Philippines may tax the gains derived from the disposition of shares owned by a resident of the US in a domestic corporation, if the latter's assets consist principally of real property interests located in the Philippines.

Under RR No. 4-86[61] dated April 2, 1986, the term "Real Property Interest" shall be understood to include real properties as understood under Philippine laws. "Real Property Interest" means any properties enumerated in Section 3 of RR No. 4-86[62] which, are not, however,

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[61] Determination of Whether the Assets of a Corporation Consists Principally of Real Property Interest under the Philippines Tax Treaties

[62] SECTION 3. *Properties*. – The following are real property inters and/or real properties:
1. Land, buildings, roads and constructions of all kinds adhered to the soil;
2. Trees, plants and growing fruits, while they are attached to the land or form an integral part of an immovable;
3. Everything attached to an immovable in a fixed manner, in such a way that it cannot be separated therefrom without breaking the material or deterioration of the object;
This includes improvements, that is, valuable additions made to property or an amelioration in its condition, amounting to more than repairs or replacement of waste, costing labor or capital and intended to enhance its value, beauty or utility or to adopt it for new or further purposes.

exclusive of others that are similarly situated. Moreover, the term "Principally" means more than 50% of the entire assets in terms of value.[63]

In the case of petitioner, its Audited Financial Statements (AFS) for the years 2007[64] and 2008[65] reveal that the real property components of its property, plant and equipment (PPE) comprise less than 50% of its assets, detailed as follows:

PPE	2007 AFS	2008 AFS
Buildings and Improvements	₱102,711,371.00	₱113,090,661.00
Machinery and Equipment	657,910,953.00	606,029,874.00
Construction and Rehabilitation in Progress	29,944,006.00	35,686,346.00
Subtotal	₱790,566,330.00	₱754,806,881.00
Total Assets	2,607,410,808.00	2,058,270,304.00
% of Subtotal to Total Assets	30.32%	36.67%

4. Statues, reliefs, painting or other objects for use as ornamentation, placed in buildings or on lands by the owner of the immovable in such a manner that it reveals the intention to attach them permanently to the tenements;
5. Machinery receptacles, instruments or implements intended by the owner of the tenement for an industry or works which may be carried on in a building or on a piece of land, and which tend directly to meet the needs of the said industry or works;
The machinery mentioned above shall embrace machines, mechanical contrivances, instruments, appliances and apparatus attached to the real estate. It includes the physical facilities available for production, as well as the installations and appurtenant service facilities, together with all the other equipment designed for or essential to its manufacturing, industrial or agricultural purposes.
6. Animal houses, pigeon-houses, beehives, fish ponds or breeding places of similar nature, in case their owner has placed them or preserves them with the intention to have them permanently attached to the land, and forming a permanent part of it; the animals in these places are included;
7. Fertilizer actually used on a piece of land;
8. Mines, quarries and slag dumps, while the matter thereof forms part of the bed, and waters either running or stagnant;
9. Docks and structures which, though floating, are intended by their nature and object to remain at a fixed place on a river, lake or coast;
10. Contracts for public works, and servitudes and other real rights over immovable property including real estate mortgages, possessory retentions, antichresis, usufructs and lessee of property;
11. Accessory to the above mentioned properties, such as livestock and equipment used in agriculture and forestry, rights to which provisions of general law respecting landed property apply, usufruct of right to work, mineral deposits, sources and other natural resources.

[63] Sec. 2(a) and (b), Revenue Regulations No. 4-86
[64] Exhibits "M-2" and "M-5"
[65] Exhibits "I-2" and "I-4"

Furthermore, as correctly pointed out by petitioner, the entire values of the PPE of petitioner for the years 2007 and 2008, respectively, comprise less than 50% of its total assets for said years, respectively, to wit:

	2007 AFS	**2008 AFS**
PPE	₱820,806,675.00	₱774,302,761.00
Total Assets	2,607,410,808.00	2,058,270,304.00
% of Subtotal to Total Assets	31.48%	37.62%

Since petitioner's assets do not consist principally of real property interest, the Reservation Clause of the RP-US Tax Treaty does not apply in this case. Accordingly, the net capital gain derived by GTRC in the redemption of its 3,729,216 preferred shares by petitioner is exempt from the 5% or 10% capital gains tax imposed under Section 28(B)(5)(c) of the NIRC of 1997, as amended.

Since the net capital gain derived by GTRC from the redemption of its 3,729,216 preferred shares is exempt from the 5% or 10% capital gains tax imposed under Section 28(B)(5)(c) of the NIRC of 1997, as amended, the question arises as to whether said net capital gain (which is the component of the Redemption Price that pertains to the "accrued and unpaid dividends") is subject to the 15% FWT imposed under Section 28(B)(5)(b) of the NIRC of 1997, as amended, which provides that:

> "SEC. 28. *Rates of Income Tax on Foreign Corporations.* –
>
> xxx xxx xxx
>
> (B) *Tax on Nonresident Foreign Corporation.* –
>
> xxx xxx xxx
>
> (5) *Tax on Certain Incomes Received by a Nonresident Foreign Corporation.* –
>
> xxx xxx xxx

> (b) *Intercorporate Dividends*. – A final withholding tax at the rate of fifteen percent (15%) is hereby imposed on the amount of cash and/or property dividends received from a domestic corporation, which shall be collected and paid as provided in Section 57(A) of this Code, subject to the condition that the country in which the nonresident foreign corporation is domiciled, shall allow a credit against the tax due from the nonresident foreign corporation taxes deemed to have been paid in the Philippines equivalent to twenty percent (20%), which represents the difference between the regular income tax of thirty-five percent (35%) and the fifteen percent (15%) tax on dividends as provided in this subparagraph: *Provided*, That effective January 1, 2009, the credit against the tax due shall be equivalent to fifteen percent (15%), which represents the difference between the regular income tax of thirty percent (30%) and the fifteen percent (15%) tax on dividends."

Under the RP-US Tax Treaty the definition and interpretation of what constitutes dividend income must be determined by the taxation law of the State of which the corporation making the distribution is a resident. Article 11(5) of the RP-US Tax Treaty states that:

> "(5) The term 'dividends' as used in this Convention means income from shares, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights assimilated to income from shares **by the taxation law of the State of which the corporation making the distribution is a resident**." *(Emphasis supplied)*

Thus, reference should be made to Philippine income tax laws and jurisprudence for purposes of determining whether the difference between the Redemption Price and the cost of the shares redeemed (in this case, par value) could be classified as dividends, for income tax purposes.

Section 73(A) of the NIRC of 1997, as amended, provides for the definition of "dividends" for income tax purposes, to wit:

"SEC. 73. *Distribution of Dividends or Assets by Corporations.* –

(A) *Definition of Dividends.* – The term 'dividends' when used in this Title means any distribution made by a corporation to its shareholders out of its earnings or profits and payable to its shareholders, whether in money or in other property.

Where a corporation distributes all of its assets in complete liquidation or dissolution, the gain realized or loss sustained by the stockholder, whether individual or corporate, is a taxable income or a deductible loss, as the case may be."

The Supreme Court has already interpreted the above-cited provision (which was formerly Section 25(a) of the Income Tax Law, Act No. 2833 of the Philippines, as amended by Section 4 of Act No. 3761[66]) in the case of **Wise & Co., Inc. *et al.* vs. Bibiano L. Meer**[67], as follows:

"In Holmby Corporation *vs.* Comm'r (83 Fed. [2d], 548-550), the court said:

'. . . the fact that the distributions were called 'dividends' and were made, in part, from earnings and profits, and that *some of them were made before liquidation or dissolution proceedings were commenced, is not controlling*. . . . The determining element is whether the distributions were in the ordinary course of business and with intent to maintain the corporation as a going concern, or after deciding to quit and with intent to liquidate the business . . . . (Emphasis supplied.)

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The amounts thus distributed among the plaintiffs were not in the nature of a recurring return on stock — in fact, they surrendered and relinquished their stock in return for said distributions, thus ceasing to be

[66] The Income Tax Law, Act No. 2833, Section 25(a), as amended by Section 4 of Act No. 3761:
"Where a corporation, partnership, association, joint-account, or insurance company distributes all of its assets in complete liquidation or dissolution, the gain realized or loss sustained by the stockholder, whether individual or corporation, is a *taxable income* or a deductible loss as the case may be."
[67] G.R. No. 48231, June 30, 1947

> stockholders of the Hongkong Company, which in turn ceased to exist in its own right as a going concern during its more or less brief administration of the business *as trustee* for the Manila Company, and finally disappeared even as such trustee.
>
> The distinction between a distribution in liquidation and an ordinary dividend is *factual;* the result in each case depending on the *particular circumstances of the case and the intent of the parties.* If the distribution is in the nature of a recurring return on stock it is an ordinary dividend. However, if the corporation is really *winding up its business* or recapitalizing and narrowing its activities, the distribution may properly be treated as in complete or partial liquidation and as payment by the corporation to the stockholder for his stock. The corporation is, in the latter instances, wiping out all parts of the stockholders' interest in the company . . .. (Montgomery, Federal Income Tax Handbook [1938-1939], 258; emphasis supplied.)"

The difference therefore between the original acquisition cost of the shares and its purchase price in cases of liquidation, whether complete or partial, should be considered as capital gains but subject to ordinary income tax rates. Said difference or gain cannot be treated as dividends as it is not a recurring return on stock.

In this case, GTRC's net capital gain (the component of Redemption Price that pertains to the "accrued and unpaid dividends") could not be classified as "dividends" *per se* since they do not come from the corporation's unrestricted retained earnings or profits. As proven by petitioner, it did not declare and pay dividends to GTRC from the year 2003 to the year 2009 as petitioner did not have unrestricted retained earnings during those years to cover any dividend declaration.[68] Furthermore, said net capital gain does not represent a recurring return on the shares redeemed but as payment by petitioner to GTRC for the redemption of the latter's 3,729,216 preferred shares. The net capital gain would not have been derived if not for the redemption of 3,729,216 preferred shares by petitioner.

[68] Exhibits "J-2", "J-3", "K-2", "K-3", "L-2", "L-3", "M-2", "M-3", "I-2", "I-3", "I-5", "H-2", "H-3" and "H-5"

Moreover, this Court noted that there is only one provision in the NIRC of 1997, as amended, which treats as dividends the gain derived from redemption or buy back of shares. Section 73(B) of the NIRC of 1997, as amended, refers to situations when *stock dividends* are redeemed whether pursuant to a partial or complete liquidation of corporations. Section 73(B) of the NIRC of 1997, as amended, is quoted hereunder:

> "SEC. 73. *Distribution of Dividends or Assets by Corporations*. –
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> xxx xxx xxx
>
> (B) *Stock Dividend*. – A stock dividend representing the transfer of surplus to capital account shall not be subjected to tax. **However, if a corporation cancels or redeems stock issued as a dividend at such time and in such manner, as to make the distribution and cancellation or redemption, in whole or in part, essentially equivalent to the distribution of a taxable dividend, the amount so distributed in redemption or cancellation of the stock shall be considered as taxable income to the extent that it represents a distribution of earnings or profits**." *(Emphasis supplied)*

In the case of **Commissioner of Internal Revenue vs. The Court of Appeals, Court of Tax Appeals and A. Soriano Corporation**,[69] the Highest Tribunal made a pronouncement with regard to the application of Section 73(B) of the NIRC of 1997, as amended [then Section 83(b) of the NIRC], to wit:

> "As qualified by the phrase 'such time and in such manner,' the exception was not intended to characterize as taxable dividend every distribution of earnings arising from the redemption of stock dividend. So that, whether the amount distributed in the redemption should be treated as the equivalent of a 'taxable dividend' is a question of fact, which is determinable on 'the basis of the particular facts of the transaction in question. No

[69] G.R. No. 108576, January 20, 1999

> decisive test can be used to determine the application of the exemption under Section 83(b).
>
> xxx xxx xxx
>
> **For the exempting clause of Section 83(b) to apply, it is indispensable that: (a) there is redemption or cancellation; (b) the transaction involves stock dividends and (c) the 'time and manner' of the transaction makes it 'essentially equivalent to a distribution of taxable dividends.** xxx" *(Emphasis supplied; citations omitted)*

Based on the above-cited provision of the NIRC of 1997, as amended, it is only in cases of redemption of shares previously issued as stock dividends that the difference between the par value of the shares and the redemption price may be treated as taxable dividends. The Supreme Court even clarified that the law did not intend to automatically characterize as taxable dividend every distribution of earnings arising from redemption of stock dividends as the taxability of said distribution as dividends will still have to be determined on a case to case basis.

In the instant case, Section 73(B) of the NIRC of 1997, as amended, will not apply. It is clear that the preferred shares redeemed by petitioner from GTRC are not stock dividends and the Redemption Price received by GTRC could not amount to a distribution of profits since petitioner did not have unrestricted retained earnings during the years 2003 to 2009.

Consequently, absent a law which specifically treats the same as dividends, the net capital gain derived by GTRC from the redemption of its 3,729,216 preferred shares should not be treated as dividends subject to 15% FWT under Section 28(B)(5)(c) of the NIRC of 1997, as amended. On this basis, petitioner has indeed erroneously withheld and remitted to the BIR the 15% FWT in the amount of ₱14,659,847.10.

Records reveal that petitioner was able to establish the erroneous withholding and remittance to the BIR of the 15% FWT in the amount of ₱14,659,847.10. In order to prove said withholding and remittance, petitioner presented its Monthly Remittance Return of Final Income taxes Withheld[70] and the Certification issued by the BIR dated October 26, 2010 confirming petitioner's remittance of the FWT in the amount of ₱14,659,847.10.[71]

As discussed above, petitioner complied with the requirement for a prior application for tax treaty relief. Moreover, the administrative and judicial claims for refund filed by petitioner, as withholding agent of GTRC, were filed within the two-year prescriptive period.

Petitioner has also proven that the 15% FWT erroneously withheld and remitted to the BIR could not have been utilized by GTRC as tax credit in the US considering that petitioner did not issue any Certificate of Final Taxes Withheld in favor of GTRC, which is necessary for GTRC to be able to claim the FWT in the amount of ₱14,659,847.10 as foreign tax credit against its income tax due in the US.[72] Petitioner likewise presented GTRC's AFS for the year 2008, which shows that GTRC suffered a net loss in the amount of US$77,000,000.00 and thus, it would not have any use for any foreign tax credit.[73]

All told, this Court finds petitioner entitled to a refund or tax credit in the amount of ₱14,659,847.10, representing erroneously withheld and remitted 15% FWT to the BIR.

WHEREFORE, premises considered, the Petition for Review is hereby **GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED** to **REFUND** or to **ISSUE A TAX CREDIT CERTIFICATE** in the amount of **₱14,659,847.10** to petitioner Goodyear

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[70] Exhibit "D"
[71] Exhibit "A"
[72] No. 24, p. 8, Exhibit "GG"
[73] Nos. 25 to 28, pp. 8 to 9, Exhibit "GG", Exhibits "EE" and "EE-1"

Philippines, Inc., representing erroneously withheld and remitted Final Withholding Tax.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ATTESTATION

I attest 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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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