

## EN BANC

[ G.R. No. 198756, August 16, 2016 ]

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

**RIZAL COMMERCIAL BANKING CORPORATION AND RCBC CAPITAL CORPORATION, PETITIONERS-INTERVENORS,**

**CAUCUS OF DEVELOPMENT NGO NETWORKS, PETITIONER-INTERVENOR, VS. REPUBLIC OF THE PHILIPPINES, COMMISSIONER OF INTERNAL REVENUE, BUREAU OF INTERNAL REVENUE, SECRETARY OF FINANCE, DEPARTMENT OF FINANCE, THE NATIONAL TREASURER, AND BUREAU OF TREASURY, RESPONDENTS.**

### RESOLUTION

**LEONEN, J.:**

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

In the notice to all Government Securities Eligible Dealers (GSEDs) entitled Public Offering of Treasury Bonds<sup>[3]</sup> (Public Offering) dated October 9, 2001, the Bureau of Treasury announced that "P30.0 [billion] worth of 10-year Zero[-]Coupon Bonds [would] be auctioned on October 16, 2001[.]"<sup>[4]</sup> It stated that "the issue being limited to 19 lenders and while taxable shall not be subject to the 20% final withholding [tax]."<sup>[5]</sup>

On October 12, 2001, the Bureau of Treasury released a memo on the Formula for the Zero-Coupon Bond.<sup>[6]</sup> The memo stated in part that the formula, in determining the purchase price and settlement amount, "is only applicable to the zeroes that are not subject to the 20% final withholding due to the 19 buyer/lender limit."<sup>[7]</sup>

On October 15, 2001, one (1) day before the auction date, the Bureau of Treasury issued the Auction Guidelines for the 10-year Zero-Coupon Treasury Bond to be

Issued on October 16, 2001 (Auction Guidelines).<sup>[8]</sup> The Auction Guidelines reiterated that the Bonds to be auctioned are "[n]ot subject to 20% withholding tax as the issue will be limited to a maximum of 19 lenders in the primary market (pursuant to BIR Revenue Regulation No. 020 2001)."<sup>[9]</sup>

At the auction held on October 16, 2001, Rizal Commercial Banking Corporation (RCBC) participated on behalf of Caucus of Development NGO Networks (CODE-NGO) and won the bid.<sup>[10]</sup> Accordingly, on October 18, 2001, the Bureau of Treasury issued P35 billion worth of Bonds at yield-to-maturity of 12.75% to RCBC for approximately P10.17 billion,<sup>[11]</sup> resulting in a discount of approximately P24.83 billion.

Likewise, on October 16, 2001, RCBC Capital entered into an underwriting agreement<sup>[12]</sup> with CODE-NGO, where RCBC Capital was appointed as the Issue Manager and Lead Underwriter for the offering of the PEACe Bonds.<sup>[13]</sup> RCBC Capital agreed to underwrite<sup>[14]</sup> on a firm basis the offering, distribution, and sale of the P35 billion Bonds at the price of P11,995,513,716.51.<sup>[15]</sup> In Section 7(r) of the underwriting agreement, CODE-NGO represented that "[a]ll income derived from the Bonds, inclusive of premium on redemption and gains on the trading of the same, are exempt from all forms of taxation as confirmed by [the] Bureau of Internal Revenue . . . letter rulings dated 31 May 2001 and 16 August 2001, respectively."<sup>[16]</sup>

RCBC Capital sold and distributed the Government Bonds for an issue price of P11,995,513,716.51.<sup>[17]</sup> Banco de Oro, et al. purchased the PEACe Bonds on different dates.<sup>[18]</sup>

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

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

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

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

resolution of [the] petition."<sup>[26]</sup>

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

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

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

On December 6, 2011, this Court noted respondents' compliance.<sup>[30]</sup>

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

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

Respondents filed their Comment,<sup>[33]</sup> to which petitioners filed the Reply.<sup>[34]</sup>

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

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

Furthermore, respondent Bureau of Treasury is **REPRIMANDED** for its continued retention of the amount corresponding to the 20% final withholding tax despite this court's directive in the temporary restraining order and in the resolution dated November 15, 2011 to deliver the amounts to the banks to be placed in escrow pending resolution of this case.

Respondent Bureau of Treasury is hereby **ORDERED** to immediately release and pay to the bondholders the amount corresponding to the 20% final withholding tax that it withheld on October 18, 2011.<sup>[36]</sup>

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

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

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

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

The issues raised in the motions revolve around the following:

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

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

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

- (a) Will the imposition of the 20% final withholding tax violate the non-impairment clause of the Constitution?
- (b) Will it constitute a deprivation of property without due process of law?

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

## I

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

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

In the assailed Decision, we agreed that interpretative rulings of the Bureau of Internal Revenue are reviewable by the Secretary of Finance under Section 4<sup>[41]</sup> of the National Internal Revenue Code. However, we held that because of the special circumstances availing in this case—namely: the question involved is purely legal; the urgency of judicial intervention given the impending maturity of the PEACe

Bonds; and the futility of an appeal to the Secretary of Finance as the latter appeared to have adopted the challenged Bureau of Internal Revenue rulings—there was no need for petitioners to exhaust all administrative remedies before seeking judicial relief.

We also stated that:

[T]he jurisdiction to review the rulings of the Commissioner of Internal Revenue pertains to the Court of Tax Appeals. The questioned BIR Ruling Nos. 370-2011 and DA 378-2011 were issued in connection with the implementation of the 1997 National Internal Revenue Code on the taxability of the interest income from zero-coupon bonds issued by the government.

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

SEC. 7. Jurisdiction. - The CTA shall exercise:

a. *Exclusive appellate jurisdiction to review by appeal, as herein provided:*

1. *Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;*

. . . .

SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal. - Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.*

. . . .

SEC. 18. *Appeal to the Court of Tax Appeals En Banc. - No civil proceeding involving matters arising under the National Internal Revenue Code, the Tariff and Customs Code or the Local Government Code shall be maintained, except as herein provided, until and unless an appeal has been previously filed with the CTA and disposed of in accordance with the provisions of this Act.*