CTA Form No. 8 (For DCC)

24-000437-0022

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CRIM. CASE NO. O-1198

PEOPLE OF THE PHILIPPINES ,
Plaintiff,

- versus -

NOTICE OF RESOLUTION

VIBAL GROUP, INC.,
KRISTINE E. MANDIGMA and
MARICEL T. VILLAS,
Accused.

To:

PROSECUTION ATTORNEY ROXANNE F. CU
Department of Justice
Padre Faura Street, Ermita
1000 Manila

ATTY. YVETTE MARIE Y. NAÑADIEGO
ATTY. NERI DANESSA B. LABAYOG
Bureau of Internal Revenue - Revenue Region No. 7A
Legal Division, Room 516, Rood Deck, Fisher Mall
Quezon Avenue corner Fernando Poe Jr., Avenue
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DUMLAO LAW OFFICES
(Counsel for all Accused)
Unit 2006, 20th Floor, Park Triangle Corporate Plaza
North Tower, 32nd Street corner 11th Avenue
Bonifacio Global City, Taguig City

GREETINGS:

You are hereby notified by these presents that on **April 30, 2025,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **May 5, 2025.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA CRIM. CASE NO. O-1198** (NPS Docket No. XVI-INV-23B-00063) For: Violation of Sec. 255, in relation to Secs. 253(d) and 256 of the NIRC of 1997, as amended
-versus-	*Members:*
VIBAL GROUP, INC., KRISTINE E. MANDIGMA, and MARICEL T. VILLAS, G. Araneta corner Ma. Clara Street, Talayan, Quezon City (AT LARGE), *Accused.*	**DEL ROSARIO,** *P.J., Chairperson,* **BACORRO-VILLENA,** *and* **CUI-DAVID,** *JJ.* Promulgated: APR 30 2025 1:10PM

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RESOLUTION

This resolves plaintiff's *Motion for Reconsideration* filed via electronic mail (e-mail) on January 3, 2025, and via personal service on January 6, 2025, with accused's *Comment/Opposition* filed via registered mail and e-mail on January 16, 2025.

To recall, the Court, in its Resolution dated December 13, 2024, dismissed the Information filed on July 29, 2024 due to plaintiff's failure to file electronic copies of its *Ex-Parte Motion for Extension of Time (to comply with the Resolutions dated 27 September 2024 and 30 September 2024)* and the *Compliance with Motion to Admit Amended Information (with the Resolutions dated 27 September 2024 and 30 September 2024)*, along with the attached Amended Information, pursuant to *En Banc* Resolution No. 8-2024.

Plaintiff prays that the dismissal of this case be reversed and set aside, thereby allowing the filing of the Amended Information against accused. Plaintiff cites the liberal construction of the Rules, as held in *Pimentel v. Adiao,*[1] and reiterates that "Section 6, Rule 1 of the Rules of Court mandates that 'these Rules shall be liberally construed in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding."

In contrast, accused argues that the present motion is filed out of time and that for plaintiff to be excused from its non-compliance with the rules, it must first provide an acceptable explanation for its failure to comply. Accused maintains that plaintiff failed to offer an acceptable for its failure to comply with the September 30, 2024 Resolution. Accused highlights that plaintiff's multiple violations lack an acceptable explanation. Consequently, accused argues that plaintiff does not deserve the Court's leniency in the application of procedural rules.

We resolve.

Courts are not precluded, in the sound exercise of their discretion, to subscribe to a liberal construction of the rules where substantial justice may be served thereby, and where no undue injury would be suffered by any party.[2] In other words, while rules of procedure should be construed liberally to promote their objective, such liberality should not be applied to the prejudice of orderly and speedy administration of justice.[3]

In this case, plaintiff was granted an opportunity to amend the defective Information but failed to file the electronic copy of its motion for extension to file an amended Information, as well as the Amended Information itself, within the prescribed period. The DOJ, as the principal counsel, received the Resolution dated October 14, 2024, directing it to submit an electronic copy of its motion for extension to file an amended Information on October 22, 2024, and had the responsibility to ensure compliance. However, due to the DOJ's lack of coordination with the BIR, this directive was not properly executed, leading to unnecessary delays in the prosecution of the case. The failure to effectively communicate and follow through on procedural requirements highlights a troubling inefficiency in handling criminal tax cases. The lack of coordination between the DOJ and the BIR is deplorable.

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1 G.R. No. 222678, October 17, 2018 [Per J. Caguioa, Second Division].

2 See *Lazaro v. People*, G.R. No. 230018, June 23, 2021 [Per J. Caguioa, First Division].

3 *Malixi, et al. v. Baltazar*, G.R. No. 208224, November 22, 2017 [Per J. Leonen, Third Division], *Philippine National Bank v. Deang Marketing Corporation*, G.R. NO. 177931, December 8, 2008 [Per J. Carpio Morales, Second Division], *Macawiag v. Judge Balindong, et al.*, G.R. NO. 159210, September 20, 2006, [Per J. Callejo, Sr., First Division].

On the other hand, the Court is aware that the Rules do not prescribe a period for filing an amended information by the prosecution when so ordered by the Court. The five-day period to amend the Information was set by this Court in its discretion. The Supreme Court explained that if the court can validly set a shorter or longer period in the exercise of its discretion, it is also empowered to allow or admit the amended Information that is belatedly filed.[4]

At this juncture, however, plaintiff is reminded of its duty to diligently pursue its case and comply with the rules, including the issuances of this Court, such as the CTA *En Banc* Resolution No. 8-2024, which took effect on September 1, 2024, and was uploaded on the CTA website. Moving forward, any inexcusable negligence on the part of the prosecution shall not be tolerated by this Court. Accordingly, the Resolution dated December 13, 2024, dismissing the case for failure to comply with the directives of the Court is **SET ASIDE**.

The accusatory portion of plaintiff's Amended Information dated October 10, 2024, now reads:

> That on or about 22 April 2021, in Quezon City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, accused **KRISTINE E. MANDIGMA and MARICEL T. VILLAS**, in their capacities as chief executive officer and controller, respectively, of accused **VIBAL GROUP, INC.**, a domestic corporation engaged in the business of publishing and printing, retail of books, office and school supplies and newspapers and hardware consultancy, and a registered taxpayer enrolled in the Bureau of Internal Revenue-Electronic Filing and Payment System (BIR-EFPS), with the obligation under the law to pay its correct expanded withholding tax for the **second quarter of taxable year 2021 (corresponding to June 2021)**, conspiring together and confederating with each other, did then and there, willfully, unlawfully and knowingly fail to pay the expanded withholding tax with the Bureau of Internal Revenue for the **second quarter of taxable year 2021 (corresponding to June 2021)**, in the total amount of One Million Sixty-Eight Thousand Five Hundred Sixty-Three Pesos and Seventeen Centavos **(₱1,068,563.17),** Philippine Currency, exclusive of surcharges and interest, despite knowledge of the "pay-as-you-file" principle in BIR-EFPS, service of collection notice and demand letter for them to pay the said tax, to the damage and prejudice of the Government.
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> CONTRARY TO LAW.

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4 See *Lazaro v. People*, G.R. No. 230018, June 23, 2021 [Per J. Caguioa, First Division].

Pursuant to Section 6, Rule 112[5] of the Rules of Court, in relation to Section 4, Rule 9[6] of the 2005 Revised Rules of the Court of Tax Appeals, as amended, the Court shall determine the existence or non-existence of probable cause. Based on these provisions, this Court has three options upon the filing of the criminal information: (1) immediately dismiss the case if it finds that the evidence on record clearly fails to establish probable cause; (2) issue a warrant of arrest if it finds probable cause; or (3) order the prosecutor to present additional evidence within five days from notice in case of doubt as to the existence of probable cause.[7]

After a judicious evaluation of the allegations in the Amended Information, Resolution, Joint Complaint-Affidavit and all the supporting documents filed by the prosecution, the Court finds probable cause that the crime charged has been committed and that accused are probably guilty thereof.

Further, accused's *Motion to Quash Information* is **DENIED** for lack of merit.

Section 13, Rule 110 of the Rules of Court prohibits charging multiple offenses in one information, except when a single punishment is prescribed for various offenses, *viz.*:

> SEC. 13. *Duplicity of the Offense.* — A complaint or information must charge only one offense, except when the law prescribes a single punishment for various offenses.

Accused insist that the use of the word "total" in the Information implies multiple instances of withholding tax and failure to remit the same, even though such instances are

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5 SEC. 6. *When Warrant of Arrest May Issue.* — (a) *By the Regional Trial Court.* — Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest or a commitment order if the accused has already been arrested pursuant to a warrant issued by the judge who conducted the preliminary investigation or when the complaint or information was filed pursuant to section 7 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint of information.

6 SEC. 4. *Warrant of arrest.* - Within ten days from the filing of the information, the Division of the Court to which the case was raffled shall evaluate the resolution of the public prosecutor and its supporting evidence. The Division may immediately dismiss the case if it finds that the evidence on record clearly fails to establish probable cause. If the Division finds probable cause, it shall issue a warrant of arrest signed by the Chairman of the Division. In case of doubt on the existence of probable cause, the Division may order the prosecutor to present additional evidence, *ex parte*, within five days from notice.

7 *People v. Hon. Dela-Torre Yadao, et al.*, G.R. Nos. 162144-54, November 13, 2012 [Per J. Abad, *En Banc*].

covered by just one return. Accused argue that the Information should have separated each transaction involved in the return.

Accused's argument fails to convince the Court.

Duplicity of the offense in criminal pleading refers to the joinder of two or more *distinct* and *separate* offenses in the same information.[8]

A review of the Information reveals that it charges a single offense related to accused's failure to pay expanded withholding tax (EWT) under Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended. Contrary to accused's claim, the total amount of taxes mentioned in the Information represents the self-assessed EWT that accused failed to pay despite notice and demand, resulting in a single violation, not multiple violations of Section 255 of the NIRC of 1997, as amended. Thus, the Court finds no basis to grant the *Motion to Quash Information* based on duplicity of offense.

Accused also argue that the acts alleged in the Information do not constitute an offense due to the lack of explanation regarding their obligation to pay EWT and the absence of an explicit mention of EWT in the NIRC. These claims are without merit.

A straightforward reading of the Information shows that the facts alleged, which are hypothetically admitted by accused,[9] clearly establish an offense for violation of Section 255 of the NIRC of 1997, as amended. Under Section 6, Rule 110 of the Rules of Court, an information to be sufficient must contain the following:

> SEC. 6. *Sufficiency of complaint or information.* — A complaint or information is sufficient if it states the **name of the accused**; the **designation of the offense given by the statute**; the **acts or omissions complained of as constituting the offense**; the **name of the offended party**; the **approximate date of the commission of the offense**; and the **place where the offense was committed**.

[8] *Soriano v. People*, G.R. No. 159517-18, June 30, 2009 [Per J. Nachura, Third Division].

[9] In *Lorenzo v. Hon. Sandiganbayan (Sixth Division) and People*, G.R. Nos. 242506-10, September 14, 2022 [Per J. Caguioa, Third Division], citing *Antone v. Beronilla*, G.R. No. 183824, December 8, 2010 [Per J. Perez, First Division], it was emphasized that "a motion to quash [on the ground that 'the facts charged do not constitute an offense'] is a hypothetical admission of the facts alleged in the Information."

When an offense is committed by more than one person, all of them shall be included in the complaint or information. (*Emphasis supplied*)

Furthermore, when alleging the acts or omissions, the wording in the Information need not be an exact reproduction of the law[10] under Rule 110, Section 9 of the Rules of Court:

SEC. 9. *Cause of the accusation.* — **The acts or omissions complained of as constituting the offense** and the qualifying and aggravating circumstances **must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged** as well as its qualifying and aggravating circumstances and for the court to pronounce judgment. (*Emphasis supplied*)

Thus, an information must clearly allege the elements of the crime and the circumstances constituting the charge.[11] The test is whether the crime is described in intelligible terms with such particularity as to apprise the accused, with reasonable certainty, of the offense charged to enable accused to suitably prepare their defense, as well as to plead their conviction, if found guilty, in a subsequent prosecution for the same offense.[12]

The essential elements of willful failure to pay tax under Section 255 of the NIRC of 1997, as amended, are:

1. The accused was required under the NIRC of 1997 to pay any tax, or withhold or remit taxes withheld, at the time or times required by law or rules and regulations;

2. The accused failed to pay the required tax; and,

3. The accused willfully failed to pay such tax, at the time or times required by law or rules and regulations.

Here, the facts constituting all the elements of willful failure to pay tax are clearly averred in the Information, which states: (1) that accused had an obligation under the law to remit

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10 *Jalandoni v. The Office of the Ombudsman, et al.*, G.R. No. 211751, May 10, 2021 [Per J. Leonen, Third Division]; *Villarba v. Court of Appeals, et al.*, G.R. No. 227777, June 15, 2020 [Per J. Leonen, Third Division].

11 *Jalandoni v. The Office of the Ombudsman, et al.*, G.R. No. 211751, May 10, 2021 [Per J. Leonen, Third Division], citing *Lazarte, Jr. v. Sandiganbayan*, G.R. No. 180122, March 13, 2009 [Per J. Tinga, *En Banc*].

12 *Jalandoni v. The Office of the Ombudsman, et al.*, G.R. No. 211751, May 10, 2021 [Per J. Leonen, Third Division].

their correct EWT withheld on its income payments; (2) that accused failed to remit the EWT; and, (3) that accused willfully failed to remit despite knowledge, notice and demand to pay.

Accused's argument about the lack of specificity in the Information regarding the type of withholding tax involved demonstrates a lack of understanding of the established laws and regulations governing EWT. Notably, EWT is addressed in the NIRC (Sections 57–58 and 78–83) and its implementing regulations, particularly Section 2.57.2 of Revenue Regulations (RR) No. 2-98,[13] as amended by Section 2 of RR No. 11-2018,[14] which outlines the types of income payments subject to EWT and specifies applicable rates for various transactions.

In sum, the Information sufficiently alleges all material facts pertaining to the elements of the crime, enabling accused to understand the nature and cause of the charges against them, thereby upholding their constitutional right to due process.

WHEREFORE, plaintiff's *Motion for Reconsideration* is **GRANTED**. The assailed Resolution dated December 13, 2024, relative to the Court's ruling in dismissing the case is **SET ASIDE**.

Accused's *Motion to Quash Information* is **DENIED**.

Let Warrants of Arrest be issued against accused **Kristine E. Mandigma** and **Maricel T. Villas**. The bail bond for their provisional liberty is fixed at Sixty Thousand Pesos (₱60,000.00) each under the pertinent provisions of the 2018 Bail Bond Guide.

Considering that CTA Crim. Case Nos. O-1196, O-1197, O-1199, O-1200, O-1201, O-1202, and the present case, O-1198, involve the same parties, raise common questions of law and/or facts, and originate from the same Joint Complaint-Affidavit and DOJ Resolution in NPS Docket No. XVI-INV-23B-00063, the Court finds it proper to consolidate these cases to

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[13] SUBJECT: Implementing Republic Act No. 8424, "An Act Amending the National Internal Revenue Code, as Amended" Relative to the Withholding on Income Subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding of Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes, April 17, 1998.

[14] SUBJECT: Amending Certain Provisions of Revenue Regulations No. 2-98, as Amended, to Implement Further Amendments Introduced by Republic Act No. 10963, Otherwise Known as the "Tax Reform for Acceleration and Inclusion (TRAIN)" Law, Relative to Withholding of Income Tax, January 31, 2018.

promote judicial economy and efficiency while preventing conflicting decisions.

Accordingly, CTA Crim. Case No. O-1198 is **CONSOLIDATED** with CTA Crim. Case No. O-1196, the case bearing the lowest docket number among the aforementioned consolidated cases.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

ON LEAVE
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice