Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	CTA EB No. 1106 (CTA CASE No. 8281)
-versus-	*Present*: DEL ROSARIO, P.J, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, and RINGPIS-LIBAN, *JJ.*
EURO-PHILIPPINES AIRLINE SERVICES, INC., *Respondent.*	Promulgated: JUL 14 2015 4:05

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision is a Petition for Review for the Court *En Banc* under *Section 2(a)(1), Rule 4,* in relation to *Section 4(b), Rule 8 of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA),*[1] *as amended,* of the Decision dated

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[1] Rule 4, SEC. 2. *Cases within the jurisdiction of the Court en banc.* – The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:

(1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;

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July 25, 2013[2] and the Resolution dated November 18, 2013[3] rendered by the Special First Division of this Court, the dispositive portions of which, respectively, read as follows:

Decision dated July 25, 2013:

"**WHEREFORE,** the instant Petition for Review is **PARTIALLY GRANTED**. The assessments for deficiency value-added tax and documentary stamp tax, as well as the interests and surcharges, for the taxable year ending March 31, 2007 are hereby **CANCELLED** and **WITHDRAWN** for lack of legal basis. The assessments for deficiency income tax and withholding tax on compensation for taxable year ending March 31, 2007 are **MODIFIED**.

Petitioner is hereby **ORDERED TO PAY** respondent the amount of ₱160,036.01, inclusive of the twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

TAX TYPE	BASIC TAX DUE	25% SURCHARGE	TOTAL
Income Tax	₱ 75,641.60	₱ 18,910.40	**₱ 94,552.00**
Withholding Tax on Compensation	52,387.21	13,096.80	**65,484.01**
TOTAL	**₱ 128,028.81**	**₱ 32,007.20**	**₱ 160,036.01**

Petitioner is likewise **ORDERED TO PAY** respondent the following:

(a) deficiency interest at the rate of twenty percent (20%) per annum on the

Rule 8, SEC. 4. *Where to appeal; mode of appeal.* – x x x

(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court *en banc* shall act on the appeal.

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[2] Penned by Associate Justice Esperanza R. Fabon-Victorino, concurred in by Associate Justice Erlinda P. Uy, *En Banc* Docket, pp. 23-53.
[3] Id., pp. 54-58.

basic deficiency income tax of ₱75,641.60 and withholding tax on compensation of ₱52,387.21 computed from July 15, 2007 and April 10, 2007, respectively, until full payment thereof pursuant to Section 249 (B) of the NIRC of 1997, as amended; and

(b) delinquency interest at the rate of twenty percent (20%) per annum on the total amount of ₱160,036.01 and on the 20% deficiency interest which have accrued as afore-stated in (a), computed from October 13, 2010 until full payment thereof pursuant to Section 249 (C) of the NIRC of 1997, as amended.

SO ORDERED."

Resolution dated November 18, 2013:

"**WHEREFORE,** respondent's Motion for Partial Reconsideration posted on August 30, 2013 is hereby **DENIED,** for lack of merit.

SO ORDERED."

The facts of the case, as recited by the Special First Division in its Decision,[4] are as follows:

"Petitioner (Euro-Philippines Airline Services, Inc.) is a domestic corporation with office address at 4th Floor, Filipino Building, 135 Dela Rosa Street, Legaspi Village, Makati City. It is an exclusive passenger sales agent of British Airways PLC, an off-line international airline in the Philippines to service the latter's passengers in the Philippines.

Respondent, on the other hand, is the Commissioner of the Bureau of Internal Revenue (BIR) empowered to issue and cancel assessments of internal revenue taxes. She holds office at the BIR

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[4] *Supra* note 2.

National Office Building, Agham Road, Diliman, Quezon City.

On September 14, 2010, petitioner received a FAN dated September 13, 2010 from respondent with Details of Discrepancies together with Assessment No. IT-LA69595-FY07-10-0455 for income tax, Assessment No. VT-LA69595-FY07-10-0455 for VAT, Assessment No. WC-LA69595-FY07-10-0455 for withholding tax on compensation, and Assessment No. DS-LA69595-FY07-10-0455 for documentary stamp tax, inclusive of surcharge and interest, for taxable year ending March 31, 2007, in the aggregate amount of ₱4,271,228.20, summarized as follows:

PARTICULARS	BASIC TAX	INTEREST	SURCHARGE	TOTAL
Income Tax	₱ 189,970.49	₱ 123,558.89		₱ 313,529.38
VAT	2,179,970.85	1,515,064.95		3,695,035.80
Withholding Tax-Compensation	131,568.14	92,494.20		224,062.34
DST	17,500.00	12,350.68	8,750.00	38,600.68
TOTAL	**₱ 2,519,009.48**	**₱ 1,743,468.72**	**₱ 8,750.00**	**₱ 4,271,228.20**

The FAN and the supporting computation sheets showed the following computations:

a) Income Tax

Net Income, per return		₱ 6,684,313.77
Add: Disallowed salaries and wages due to Non-withholding (Schedule 1)		542,772.84
Net Income, per audit		7,227,086.61
Income Tax Due (35%)		2,529,480.31
Less: Tax Payments/Credits:		
Prior Year's Excess Credits	₱ 229,095.93	
Creditable Withholding Tax per BIR Form 2307	1,928,654.59	
Tax Paid	111,759.30	2,339,509.82
Basic Tax Due		189,970.49
Interest (7-16-07 to 10-15-10)		123,558.89
Total Amount Due		**₱ 313,529.38**

b) Withholding Tax on Compensation

Compensation & Benefits per FS/ITR		₱8,228,025.00
Less: Total Compensation per BIR Form No. 1601-C		7,685,252.16
Disallowed salaries and wages for non-withholding		542,772.84
Withholding Tax Ratio		
Withholding Tax paid per return	₱1,862,618.89	

Gross Compensation per return	7,685,252.16	24.24%
Withholding Tax on Compensation still due		131,568.14
Interest (4-11-07 to 04-12-10)		92,494.20
Total Withholding Tax on Compensation Due		**₱ 224,062.34**

c) Value-added Tax and Interest

Taxable Receipts per VAT Returns		₱ 8,746.51
Add: Receipts not Subjected to VAT (Schedule 2)		20,876,935.16
Taxable VATable Receipts per Investigation		20,885,681.67
Output Tax Due (Schedule 4)		2,506,281.80
Less: Tax Credits/payments		
Input Tax Carried Over from Previous Year	₱ 182,654.70	
Allowable Input Tax per Audit	143,032.83	
VAT Payments	623.42	326,310.95
Basic Tax Due		2,179,970.85
Interest (04-26-07 to 10-15-10)		1,515,064.95
TOTAL AMOUNT DUE		**₱ 3,695,035.80**

d) Documentary Stamp Tax, Surcharge and Interest

Assignment of Certificate of Time Deposit (Sec. 98 in relation to Sec. 179 of NIRC)		₱ 3,500,000.00
Tax Rate		1/200
DST Due		17,500.00
50% Surcharge		8,750.00
Interest (04-06-07 to 10-15-10)		12,350.68
TOTAL AMOUNT DUE		**₱ 38,600.68**

Respondent disallowed petitioner's salaries and wages expense in the amount of ₱542,772.84 for failure of petitioner to withhold the corresponding withholding tax thereon and to remit the same to the BIR. In addition, the commission and miscellaneous income received by the local sales agents from their foreign principals are subject to VAT.

On September 29, 2010, petitioner filed with respondent its protest together with supporting documents, signed by its President/General Manager Violeta D. Echevarria and received by respondent through the Regional Director of Revenue Region No. 8-Makati.

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Respondent failed to act on petitioner's protest within the required 180-day period within which to resolve the protest. Hence, this Petition for Review filed on April 20, 2011.

In her Answer posted on June 28, 2011, respondent raised the following Special and Affirmative Defenses:

> 4. The assessments in question were made and issued in accordance with law, rules and regulations.
>
> 5. Respondent disallowed petitioner's salaries and wages expense in the amount of ₱542,772.84 for failure of the petitioner to withhold the corresponding withholding tax thereon and remit the same to the BIR.
>
> 6. Commission and miscellaneous income received by the local sales agents from their foreign principals are subject to VAT. Thus, petitioner's receipts in the total amount of ₱20,876,935.16 from British Airways PLC is subject to 12% VAT.
>
> 7. The deficiency withholding tax on compensation in the amount of ₱131,568.14 arose from petitioner's failure to withhold the corresponding withholding tax on the salaries and wages expense in the amount of ₱542,772.84.
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> 8. The assignment of Certificate of Time Deposit is subject to documentary stamp tax (DST) as provided for under Section 198 of the 1997 Tax Code, as amended.
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> 9. All presumptions are in favor of the correctness of the tax assessment (Interprovincial Autobus vs. Collector of Internal Revenue, 98 Phil. 290).

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To prove its case, petitioner presented its Finance Manager, Marie B. Dino, the Court Commissioned Independent Certified Public Accountant (ICPA), Dominador Homer G. Dumaraos and its Independent Auditor and Tax Consultant, Moises Visperas Jr.

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According to the witness, petitioner is not liable for the deficiency assessments issued by respondent. As to deficiency WTC, petitioner's contributions to SSS, Philhealth, HDMF, Employees Compensation and other employee benefits such as medical, dental, HMO premiums and rice subsidy are not considered as compensation subject to withholding tax. And since the assessment for alleged deficiency income tax stemmed from the denial of the certain expenses due to alleged failure to withhold taxes on contributions to government agencies, it follows that the assessment for deficiency income tax should also be declared invalid.

About the claimed VAT deficiency, she invoked Republic Act (R.A.) No. 9337, as implemented by Revenue Memorandum Circular (RMC) No. 46-2008, which provides that "services rendered to persons engaged exclusively in international air transport operations is zero-rated". Relevantly, RMC No. 46-2008 does not mention commission income which petitioner received from British Airways PLC as compensation for services it rendered for the latter's passenger requirements, which includes ticketing, booking and refunds.

Anent the DST assessment, there is nothing in Section 198 of the NIRC that states that assignment of a certificate of time deposit is subject to DST.

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The Special First Division held that Euro-Philippines Airline Services, Inc. (Euro-Phil)'s share in the SSS, Medicare and Pag-ibig contributions for the benefit of its employees are exempt from the requirement of withholding tax on compensation, citing Section 32(B)(7)(f)[5] of the National Internal Revenue Code (NIRC) of 1997, and Section 2.78.1(B)(12) of Revenue Regulations (RR) No. 2-98.[6] However, the medical insurance premium was considered compensation subject to income tax and consequently, to withholding tax, for failure to show that such amount refers to the medical benefits considered as *de minimis* benefits contemplated under RR No. 2-98, as amended by RR No. 10-2000,[7] and that Euro-Phil met the conditions under

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[5] SEC. 32. Gross Income. —

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(B) Exclusions from Gross Income. — The following items shall not be included in gross income and shall be exempt from taxation under this Title:

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(7) Miscellaneous Items. —

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(f) GSIS, SSS, Medicare and Other Contributions. — GSIS, **SSS, Medicare and Pag-Ibig contributions,** and union dues of individuals. (Emphasis supplied)

[6] SECTION 2.78.1. Withholding of Income Tax on Compensation Income. —

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(B) Exemptions from withholding tax on compensation. — The following income payments are exempted from the requirement of withholding tax on compensation:

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(12) GSIS, **SSS, Medicare and other contributions**. — GSIS, SSS, Medicare and Pag-ibig contributions, and union dues of individual employees. (Emphasis supplied)

[7] SECTION 1. Section 2.78.1(A)(3), (6)(b)(ii) and (7) of Revenue Regulations No. 2-98, as last amended by Revenue Regulations No. 8-2000, is hereby further amended to read as follows:

Sec. 2.78.1. Withholding of Income Tax on Compensation Income. —

(A) . . .

(3) Facilities and privileges of relatively small value. —

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The following shall be considered as 'de minimis' benefits not subject to INCOME

Section 34(M)[8] of the 1997 NIRC, as amended. Likewise, the partial amount of ₱49,036.63 as medical and staff expenses was subjected to income tax and consequently to withholding tax on compensation for failure to fully substantiate the said amount.

The Special First Division also cancelled the assessment for deficiency documentary stamp tax for failure of CIR to show that the Certificate of Time Deposit, which is the basis of the said tax deficiency, was renewed, in accordance with Section 179[9] of the NIRC 1997, in relation to Section 198[10]

TAX AS WELL AS withholding tax on compensation income of both managerial and rank and file employees:

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(e) Actual yearly medical benefits not exceeding P10,000 per annum;

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[8] SEC. 34. Deductions from Gross Income. — xxx

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(M) Premium Payments on Health and/or Hospitalization Insurance of an Individual Taxpayer. — The amount of premiums not to exceed Two thousand four hundred pesos (P2,400) per family or Two hundred pesos (P200) a month paid during the taxable year for health and/or hospitalization insurance taken by the taxpayer for himself, including his family, shall be allowed as a deduction from his gross income: Provided, That said family has a gross income of not more than Two hundred fifty thousand pesos (P250,000) for the taxable year: Provided, finally, That in the case of married taxpayers, only the spouse claiming the additional exemption for dependents shall be entitled to this deduction.

[9] SEC. 179. Stamp Tax on All Debt Instruments. — **On every original issue of debt instruments**, there shall be collected a documentary stamp tax on One peso (P1.00) on each Two hundred pesos (P200), or fractional part thereof, of the issue price of any such debt instruments: Provided, That for such debt instruments with terms of less than one (1) year, the documentary stamp tax to be collected shall be of a proportional amount in accordance with the ratio of its term in number of days to three hundred sixty-five (365) days: Provided, further, That only one documentary stamp tax shall be imposed on either loan agreement, or promissory notes issued to secure such loan.

For purposes of this section, the term debt instrument shall mean instruments representing borrowing and lending transactions including but not limited to debentures, **certificates of indebtedness**, due bills, bonds, loan agreements, including those signed abroad wherein the object of contract is located or used in the Philippines, instruments and securities issued by the government of any of its instrumentalities, deposit substitute debt instruments, **certificates or other evidences of deposits that are either drawing interest significantly higher than the regular savings deposit taking into consideration the size of the** thereof. By citing the Supreme Court case of *Philacor Credit Corporation vs. Commissioner of Internal Revenue,*[11] the assailed Decision ruled:

> "The Supreme Court, in the case of *Philacor Credit Corporation vs. Commissioner of Internal Revenue,* had the occasion to interpret Section 198 of the NIRC of 1997, which is a similar provision of the old Tax Code, in this wise:
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>> If we look closely at this provision, we would find that **an assignment or transfer becomes taxable only in connection with mortgages, leases and policies of insurance. The list does not include the assignment or transfer of evidences of indebtedness; rather, it is the renewal of these that is taxable. The present case does not involve a renewal, but a mere transfer or assignment of the evidences of indebtedness or promissory notes.** A renewal would involve an increase in the amount of indebtedness or an extension of a period, and not the mere change in person of the payee.
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>> **In BIR Ruling No. 139-97 issued on December 29, 1997, then CIR Liwayway Vinzons-Chato pronounced that the assignment of a loan that is not for a renewal or a continuance does not result in a liability for DST.** Revenue Regulations No. 13-2004, issued on December 23, 2004, states that '[t]he DST on all debt instruments shall be imposed only on every original issue and the tax shall be based on the issue price thereof. Hence, the sale of a debt instrument in the secondary market will not be subject to the DST.' xxx (Emphasis supplied)

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deposit and the risks involved or drawing interest and having a specific maturity date, orders for payment of any sum of money otherwise than at sight or on demand, promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation. (Emphasis supplied)

[10] SEC. 198. Stamp Tax on Assignments and Renewals of Certain Instruments. — **Upon each and every assignment or transfer of any mortgage, lease or policy of insurance**, or the renewal or continuance of any agreement, contract, charter, or any evidence of obligation or indebtedness by altering or otherwise, there shall be levied, collected and paid a documentary stamp tax, at the same rate as that imposed on the original instrument.

[11] G.R. No. 169899, February 6, 2013.

From the pronouncement of the Final Arbiter, the mere transfer or assignment of evidence of indebtedness is not among those subject to DST; rather it is the renewal of such that is taxable. A renewal would involve an increase in the amount of indebtedness or an extension of a period, and not the mere change in the person of the payee.

Revenue Memorandum Circular No. 77-2012 dated November 22, 2012, which interpret, among others, Section 198 of the NIRC of 1997, states that any assignment or re-assignment of debt instruments shall be subject to DST "only when the assignment or re-assignment of the debt instrument entails changing the maturity date or remaining period of coverage from that of the original instrument or carries with it a renewal or issuance of new instruments in the name of the transferee to replace the old ones." Otherwise, the assignment or re-assignment without any change in maturity date shall be exempt from DST as provided under Section 199 (f) or (g) of the NIRC of 1997, as amended.

In the instant case, respondent assessed petitioner of deficiency DST under Section 179 of the NIRC of 1997, as amended, on the basis of its assignment of Certificate of Time Deposit. However, respondent failed to allege or show that the said certificate was renewed, i.e., there was a change in maturity date. For this reason, the Court agrees with petitioner that the mere assignment of said certificate of time deposit is not subject to DST."

With respect to the Value-Added Tax, the assessment therein was also cancelled by the Special First Division, citing therein Section 108[12] of the NIRC of 1997. Said

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[12] SEC. 108. Value-added Tax on Sale of Services and Use or Lease of Properties. —

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(B) Transactions Subject to Zero Percent (0%) Rate. — **The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:**

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(4) **Services rendered to persons engaged in** international shipping or **international air**

provision provides that services rendered by VAT-registered persons to persons engaged in international air transport operations shall be subject to zero percent rate. In relation to this, Revenue Memorandum Circular (RMC) No. 46-2008[13] provides:

> "II. Definition of Terms
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> xxx xxx xxx
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> 3. **International Air Carrier** – shall refer to a foreign airline corporation doing business in the Philippines having been granted landing rights in any Philippine port to perform international air transportation services/activities or flight operations from the Philippines to anywhere in the world and vice versa, in the case of on-line carrier, or **having maintained business establishment, agent or representative office in the Philippines for the sale of its own tickets/passage documents or tickets/passage documents of other airline companies, which airline companies operate without touching any Philippine port, in the case of off-line carrier. International air carrier includes both off-line carrier and on-line carrier.**
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> III. Questions and Answers
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> xxx xxx xxx
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> Q-14: Which transactions with international air transport operators are zero-rated?

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transport operations, including leases of property for use thereof; (Emphasis supplied)

[13] Subject: Clarification of Issues Concerning Common Carriers by Air and Their Agents Relative to the Revenue and Receipt from Transport of Passengers, Goods/Cargoes and Mail, and from Excess Baggage.

> A-14: **Sale of services to persons engaged exclusively in international air transport operations**, including leases of property for use thereof, and the sale of goods, supplies, equipment and fuel **are zero-rated**. However, sale of goods, supplies, equipment and fuel as well as services rendered to persons engaged in both domestic and international operations shall be zero-rated only with respect to the portion that will be used in their international operations." (*Emphasis supplied*)

As found by the Special First Division, British Airways PLC is authorized by the Civil Aeronautics Board (CAB) to operate as an off-line carrier in the Philippines for the period covered by the subject assessment. Under the Agreements between Euro-Phil and British Airways PLC, the former is the exclusive passenger sales agent of British Airways PLC in the Philippines. According to the assailed Decision, Euro-Phil renders services as passenger sales agent only to British Airways PLC, which is an off-line international air carrier engaged exclusively in international air transport. Thus, Euro-Phil can treat its sale of services to British Airways PLC as VAT zero-rated sales.

In sum, the Special First Division ruled that the assessments for value-added tax and documentary stamp tax be cancelled and withdrawn, and Euro-Phil to pay partial amount of the assessed income tax and withholding tax on compensation, including surcharge and interests.

CIR's Partial Motion for Reconsideration covers only the value-added tax that was denied in the Decision. Such Motion was denied for lack of merit. Hence, this Petition.

CIR argues in her Petition for Review that Euro-Phil actually renders services to third parties and not to British Airways PLC, citing the cases of *Commissioner of Internal Revenue vs. British Overseas Airways Corporation,*[14] *Commissioner of Internal Revenue vs. Baier-Nickel,*[15] and

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[14] 149 SCRA 395 (1987).
[15] G.R. No. 153793, August 29, 2006.

South African Airways vs. Commissioner of Internal Revenue,[16] thus, Section 108 of the NIRC of 1997 is not applicable which subjects Euro-Phil's VAT transactions to zero percent rate. Moreover, the CIR contends that Euro-Phil failed to present proof that it issued "zero-rated official receipts" covering such zero-rated sales pursuant to Section 113(B)(2)(c) of the 1997 NIRC, which states that "if the sale is subject to zero percent (0%) value-added tax, the term 'zero-rated sale' shall be written or printed prominently on the invoice or receipt," thus, Euro-Phil cannot claim the benefit of 0% VAT.

On the first argument, it must be noted that the above-cited cases by the CIR do not cover the issue involved in the instant case. As stated in the cited cases, the issue therein is whether a foreign airline company which does not maintain any flight to and from the Philippines is liable for Philippine income tax in respect of sales of air tickets in the Philippines, through a general sales agent relating to the carriage of passengers in the Philippines, between two points both outside the Philippines. Herein quoted:

> "In *Commissioner of Internal Revenue v. British Overseas Airways Corporation (BOAC)*,[17] the issue was whether BOAC, a foreign airline company which does not maintain any flight to and from the Philippines is liable for Philippine income taxation in respect of sales of air tickets in the Philippines, through a general sales agent relating to the carriage of passengers and cargo between two points both outside the Philippines. Ruling in the affirmative, the Court applied the case of Alexander Howden & Co., Ltd. v. Collector of Internal Revenue, and reiterated the rule that the source of income is that activity which produced the income. It was held that the sale of tickets in the Philippines is the activity that produced the income and therefore BOAC should pay income tax in the Philippines because it undertook an income producing activity in the country."[18] (Underlining Supplied)

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[16] G.R. No. 180356, February 16, 2010.
[17] *Supra* note 14.
[18] *Supra* note 15.

> "In *Commissioner of Internal Revenue v. British Overseas Airways Corporation (British Overseas Airways),* which was decided under similar factual circumstances, this Court ruled that off-line air carriers having general sales agents in the Philippines are engaged in or doing business in the Philippines and that their income from sales of passage documents here is income from within the Philippines. Thus, in that case, we held the off-line air carrier liable for the 32% tax on its taxable income."[19] (Underlining Supplied)

In the instant case, the taxpayer being questioned herein is the general sales agent and not the foreign airline company. Also, the tax involved is VAT on the services rendered by the said general sales agent and not foreign airline company's income tax on the specified sale of air tickets. Thus, the ruling in the said cases does not affect the applicability of Section 108 of the 1997 NIRC in the instant case, as it covers the general sales agent, which is Euro-Phil herein, with respect to its VAT transactions.

That Euro-Phil wasn't able to present official receipts with words "zero-rated" imprinted thereon cannot also hold water. It must be noted that the case cited by CIR, *Kepco Philippines Corporation vs. Commissioner of Internal Revenue,*[20] as well as other Supreme Court cases[21] having the same issue, cannot be applied in the case at bar as the afore-mentioned cases involve claims for tax refund or issuance of tax credit certificate. In said claims, the burden is necessarily upon the taxpayer, as exemptions are granted strictly against the grantee and liberally in favor of the government. As specified therein, "failure to print the word "zero-rated" on the invoices or receipts is fatal to a *claim for refund or credit of input VAT* on zero-rated sales."

[19] *Supra* note 16.
[20] G.R. No. 179961, January 31, 2011.
[21] Panasonic Communications Imaging Corporation of the Philippines v. Commissioner of Internal Revenue, G.R. No. 178090, February 8, 2010, 612 SCRA 28; J.R.A. Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 177127, October 11, 2010; Hitachi Global Storage Technologies Philippines Corp. (formerly Hitachi Computer Products (Asia) Corporations) v. Commissioner of Internal Revenue, G.R. No. 174212, October 20, 2010; and Kepco Philippines Corporation v. Commissioner of Internal Revenue, G.R. No. 181858, November 24, 2010.

As clearly discussed in the landmark case of *Panasonic Communications Imaging Corporation of the Philippines v. Commissioner of Internal Revenue:*[22]

> "Zero-rated transactions generally refer to the export sale of goods and services. The tax rate in this case is set at zero. When applied to the tax base or the selling price of the goods or services sold, such zero rate results in no tax chargeable against the foreign buyer or customer. But, although the seller in such transactions charges no output tax, <u>he can claim a refund of the VAT</u> that his suppliers charged him. xxx
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> For the effective zero rating of such transactions, however, the taxpayer has to be VAT-registered and must comply with invoicing requirements." (Underlining supplied)

Thus, it shows that the strict implementation of invoicing or receipt requirements is for purposes of tax refund. As the seller may credit his input tax against his zero-rated output tax through tax refund or credit, such grant is accompanied with the burden of proving zero-rated transactions through strict compliance with invoice or receipt prerequisites.

In the instant case, what was made against Euro-Phil is an assessment, unlike in cases of claims for refund or tax credit, where the taxpayer has the burden to prove its claim, thus, the fatality of non-presentation of official receipts or invoices.

Suffice it to say that in case of doubt, tax statutes are to be construed strictly against the Government and liberally in favor of the taxpayer, for taxes, being burdens, are not to be presumed beyond what the applicable statute expressly and clearly declares.[23] The Court in Division has already been satisfied that the assessment on VAT lacks legal basis pursuant to RMC No. 46-2008 and Section 108 of the 1997 NIRC.

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[22] G.R. No. 178090, February 8, 2010.

[23] Commissioner of Internal Revenue vs. La Tondeña, Inc. and CTA, 5 SCRA 665, citing Manila Railroad Company vs. Collector of Customs, 52 Phil. 950

Further, as correctly pointed out by Euro-Phil in its Comment,[24] issues not raised in the administrative level cannot be raised for the first time on appeal.[25] The issues herein were not raised by the Commissioner on the administrative level, and were neither raised by her before the Division. This doctrine is explained by the Supreme Court in the case of *Aguinaldo Industries Corporation (Fishing Nets Divisions) v. Commissioner of Internal Revenue and the Court of Tax Appeals,*[26] as follows:

> "To allow a litigant to assume a different posture when he comes before the court and challenge the position he had accepted at the administrative level, would be to sanction a procedure whereby the court — which is supposed to review administrative determinations would not review, but determine and decide for the first time, a question not raised at the administrative forum. This cannot be permitted, for the same reason that underlies the requirement of prior exhaustion of administrative remedies to give administrative authorities the prior opportunity to decide controversies within its competence, and in much the same way that, on the judicial level, issues not raised in the lower court cannot be raised for the first time on appeal."

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED**. Accordingly, the Decision and the Resolution, dated July 25, 2013 and November 18, 2013, respectively, are hereby **AFFIRMED**.

SO ORDERED.

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

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[24] *En Banc* Docket, pp. 77-81.
[25] Commissioner of Internal Revenue vs. Procter & Gamble Philippines Manufacturing Corporation, G.R. No. 66838, December 02, 1991.
[26] G.R. No. L-29790, 112 SCRA 136.

WE CONCUR:

(with Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen M. Ringpis-Liban
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 1106** (CTA Case No. 8281)
	Present:
-versus-	**DEL ROSARIO,** *PJ,* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS,** *and* **RINGPIS-LIBAN,** *JJ.*
EURO-PHILIPPINES AIRLINE SERVICES, INC., *Respondent.*	Promulgated: JUL 14 2015

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DISSENTING OPINION

DEL ROSARIO, PJ.:

In her *Ponencia,* my esteemed and learned colleague, the Honorable Associate Justice Cielito N. Mindaro-Grulla, dismissed the present Petition for Review and affirmed the Decision of the Special First Division in CTA Case No. 8281.

With all due respect, after a careful examination of the evidence on record, as well as the applicable laws and jurisprudence, I vote to uphold the Value-Added Tax (VAT) assessment of the Bureau of Internal Revenue (BIR) and accordingly, to grant the present Petition for Review.

Well-settled is the rule that tax assessments by tax examiners are presumed correct and made in good faith. All presumptions are in favor of the correctness of a tax assessment. It is to be presumed, however, that such assessment was based on sufficient evidence. Upon the introduction of the assessment in evidence, a *prima facie* case of liability on the part of the taxpayer is made.[1]

In the case at bar, respondent is being assessed for deficiency VAT for the services it rendered as passenger sales agent of British Airways PLC. Respondent invokes Section 108 of the National Internal Revenue Code (NIRC) of 1997, as amended, which provides that services rendered by VAT-registered persons to persons engaged in international air transport operations shall be subject to zero percent (0%) rate.

It is my humble opinion that a taxpayer must also show proof of compliance with the invoicing requirements laid down in Section 113 of the NIRC of 1997, as amended, aside from the sale of services qualifying as subject to zero percent (0%) VAT to be entitled to zero rating. In *Kepco Philippines Corporation v. Commissioner of Internal Revenue,*[2] the Supreme Court ruled that a taxpayer must indicate in its invoice/receipt the word "zero-rated" in order for its sales to qualify for zero-rating, *viz:*

> "Indeed, it is the duty of Kepco to comply with the requirements, including the **imprinting of the words "zero-rated" in its VAT official receipts and invoices in order for its sales of electricity to NPC to qualify for zero-rating**.
>
> It must be emphasized that the requirement of **imprinting the word 'zero-rated' on the invoices or receipts** under Section 4.108-1 of RR No. 7-95 **is mandatory** as ruled by the CTA *En Banc,* citing *Tropitek International, Inc. v. Commissioner of Internal Revenue.* " (citations omitted)

Pursuant to the above settled jurisprudence, a taxpayer must show proof that its transaction falls under Section 108 of the NIRC of 1997, as amended, and that it has complied with the invoicing requirements to be entitled to zero-rating. **These requirements are indispensable not only in tax refund cases but also in assessment cases as the taxpayer has the**

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[1] *Commissioner of Internal Revenue v. Hantex Trading, Inc.,* G.R. No. 136975, March 31, 2005.
[2] G.R. No. 179961, January 31, 2011.

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burden of proof to show that its sales are zero-rated and not subject to 12% VAT.

The imprinting of "zero-rated" is necessary to distinguish sales subject to 12% VAT, those that are subject to 0% VAT (zero-rated) and exempt sales, to enable the Bureau of Internal Revenue to properly implement and enforce the other provisions of the NIRC of 1997, as amended, on VAT.[3] In the absence of the word "zero-rated" in the invoice, said transaction is deemed subject to 12% VAT, instead of 0%, considering that the taxpayer issued a VAT-registered invoice/receipt.

In this case, records show that respondent failed to present and offer any official receipt to prove that it has complied with the invoicing requirements. In the absence of the official receipts, respondent's sales of services to British Airways PLC is deemed subject to 12% VAT.

For all the foregoing, I **VOTE** to **UPHOLD** the deficiency VAT assessment in the amount of ₱4,271,228.20 and accordingly, to **GRANT** the present Petition for Review.

ROMAN G. DEL ROSARIO
Presiding Justice

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[3] *Id.*