REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

MARINA SQUARE PROPERTIES, INC., Petitioner	**CTA CASE NO. 11092**
	Present:
vs.	**RINGPIS-LIBAN,** *P.J., Chairperson,* **MODESTO-SAN PEDRO,** and **FERRER-FLORES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUN 29 2026

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DECISION

***FERRER-FLORES, J.*:**

The **Petition for Review** filed on February 28, 2023, prays for the cancellation and withdrawal of the assessments issued by respondent against petitioner on its alleged deficiency income tax, value-added tax (VAT), withholding tax on compensation (WTC), expanded withholding tax (EWT), documentary stamp tax (DST), improperly accumulated earnings tax (IAET), and compromise penalty in the aggregate amount of **₱767,903,021.47**, inclusive of surcharges and interest for calendar year (CY) 2018.[1]

THE PARTIES

Petitioner **Marina Square Properties, Inc.** is a corporation organized and existing under the laws of the Republic of the Philippines, with principal office address at 17/F New Coast Hotel Manila, 1588 M.H. del Pilar Street cor. Pedro Gil, Malate, Manila.[2] It is a registered taxpayer of the Bureau of Internal Revenue (BIR), Large Taxpayers Service (LTS), Revenue District

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[1] Summary of the Case, Pre-Trial Order dated February 12, 2024, Docket – Vol. I, p. 514.

[2] Par. 2, Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. I, p. 483.

Office No. 126 – Regular Large Taxpayers' Division III, with Taxpayer Identification Number 220-611-273-00000, as shown by its BIR Certificate of Registration dated October 11, 2016.[3]

Respondent is the duly-appointed **Commissioner of Internal Revenue** (CIR) vested under the appropriate laws with the authority to carry out the functions, duties, and responsibilities of said office including, *inter alia*, the power to decide disputed assessments and to cancel and abate tax liabilities, pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, and other tax laws, rules and regulations.[4]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

On November 17, 2021, petitioner received the BIR Letter of Authority (LOA) No. 126-2021-00000475 (SN:eLA202000003571) dated November 12, 2021 issued by the OIC-Assistant Commissioner, LTS,[5] authorizing Revenue Officers (ROs) Kimberly Granada, Maribel Serafica and Group Supervisor Arthur Ramos of Regular Large Taxpayers Audit Division 3, to examine petitioner's books of accounts and other accounting records for all internal revenue taxes including DST, other taxes (miscellaneous tax), for the period from January 1, 2018 to December 31, 2018.

Thereafter, petitioner received the Preliminary Assessment Notice (PAN) dated March 15, 2022,[6] wherein respondent informed petitioner of the proposed assessments for deficiency income tax, VAT, WTC, EWT, DST, IAET and compromise penalties for CY 2018 in the aggregate amount of ₱743,121,648.27, inclusive of surcharge and interest.

On March 30, 2022, petitioner filed a written reply to the PAN of even date,[7] praying for the cancellation and withdrawal of the proposed assessments on the ground that they are devoid of any legal and factual bases.

Petitioner then received respondent's Formal Letter of Demand (FLD) with Details of Discrepancies and Final Assessment Notices (FAN) dated May 4, 2022 on even date, assessing petitioner of deficiency income tax, VAT, WTC, EWT, DST, IAET, and compromise penalties for CY 2018 in

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3 Par. 3, Stipulation of Facts, JSFI, Docket – Vol. I, p. 483.
4 Par. 1, *Id.*
5 Par. 4, *Id.*; Exhibit "P-3", *Id.* at 99; Exhibit "R-3", BIR Records – Folder I (Exhibit "R-7"), p. 828.
6 Par. 5, Stipulation of Facts, JSFI, Docket – Vol. I, p. 483; Exhibits "P-4", and "R-5" and "R-5-1", BIR Records – Folder I (Exhibit "R-7"), pp. 860 to 867.
7 Exhibit "P-5", Docket – Vol. I, pp. 107 to 123.

the aggregate amount of ₱767,903,021.47, inclusive of surcharge and interest.[8]

On June 3, 2022, petitioner filed with the LTS-BIR, its Request for Reinvestigation against the FLD.[9] Subsequently, on August 2, 2022, petitioner submitted to the same office additional supporting documents in support of its Request for Reinvestigation.[10]

PROCEEDINGS BEFORE THIS COURT

As earlier stated, petitioner filed the present *Petition for Review* on February 28, 2023.[11]

On August 8, 2023, respondent filed his *Answer (Re: Petition for Review dated 28 February 2023)*,[12] interposing his special and affirmative defenses.

Respondent transmitted the *BIR Records* of the present case on August 18, 2023, consisting of two folders.[13]

The Pre-Trial Conference was set and held on November 9, 2023,[14] wherein the case was referred to mediation on December 4, 2023.[15] Prior thereto, *Respondent's Pre-Trial Brief*,[16] and *Petitioner's Pre-Trial Brief*,[17] were both filed on November 6, 2023.

However, the Philippine Mediation Center – Court of Tax Appeals issued the *No Agreement To Mediate* dated December 4, 2023,[18] stating that the parties decided not to have their case mediated.

On December 7, 2023, the parties submitted their *Joint Stipulation of Facts and Issues*,[19] which was admitted and approved by the Court in its

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8 Par. 6, Stipulation of Facts, JSFI, Docket – Vol. I, p. 483; Exhibits "P-6", "R-6" and "R-6-1", BIR Records – Folder II (Exhibit "R-7-1"), pp. 951 to 961; BIR Records – Folder II (Exhibit "R-7-1"), pp. 936 to 942.

9 Par. 7, Stipulation of Facts, JSFI, Docket – Vol. I, p. 484; Exhibit "P-7", Docket – Vol. I, pp. 150 to 181.

10 Par. 8, *Id.*; Exhibit "P-8", *Id.* at 182 to 185.

11 Docket – Vol. I, pp. 6 to 53.

12 *Id.* at 401 to 427.

13 Respondent's *Compliance* dated August 18, 2023, Docket – Vol. I, pp. 431 to 433.

14 Notice of Pre-Trial Conference dated August 14, 2023, Docket – Vol. I, pp. 429 to 430; Minutes of the Hearing held on, and Order dated, November 9, 2023, Docket – Vol. I, pp. 469 to 473.

15 Transcript of Stenographic Notes dated November 9, 2023, p. 6; Pre-Trial Conference Matrix dated November 9, 2023, Docket – Vol. I, p. 474.

16 Docket – Vol. I, pp. 449 to 453.

17 *Id.* at 456 to 468.

18 *Id.* at 490.

Resolution dated January 3, 2024,[20] thereby deeming the termination of the Pre-Trial. The Pre-Trial Order dated February 12, 2024 was then issued.[21]

Trial then ensued, with both parties presenting and offering their respective documentary and testimonial evidence.

Petitioner offered the testimonies of: (1) Ms. Violeta R. Gallardo,[22] its Chief Accountant; and, (2) Ms. Anselma P. Maliwat,[23] the Court-commissioned Independent Certified Public Accountant (ICPA).[24]

The *Report* of the ICPA was submitted on March 22, 2024.[25]

On May 30, 2024, petitioner filed its *Formal Offer of Evidence With Motion to Set Commissioner's Hearing*,[26] to which respondent filed his *Comment (on Petitioner's Formal Offer of Evidence with Motion to Set Commissioner's Hearing)* on June 6, 2024.[27] In the Resolution dated August 29, 2024,[28] the Court granted petitioner's *Motion to Set Commissioner's Hearing*. Thereafter, in the Resolution dated March 26, 2025,[29] the Court admitted all of petitioner's offered exhibits.

For his part, respondent presented the testimony of RO Granada.[30]

On October 1, 2024, *Respondent's Formal Offer of Evidence* was submitted,[31] to which petitioner filed its *Comment (Re: Respondent's Formal Offer of Evidence)* on October 10, 2024.[32] In the Resolution dated November 27, 2024,[33] the Court admitted all of respondent's offered exhibits.

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19 Docket – Vol. I, pp. 482 to 489.
20 *Id.* at 512.
21 *Id.* at 514 to 519.
22 Exhibit "P-18", Docket – Vol. I, pp. 54 to 79; Minutes of hearing held on, and Order dated, March 19, 2024, Docket – Vol. I, pp. 523 to 524.
23 Exhibit "P-19", Docket – Vol. I, pp. 534 to 549; Minutes of hearing held on, and Order dated, April 30, 2024, Docket – Vol. II, pp. 550 to 552.
24 *Oath of Commission* dated February 22, 2024, Docket – Vol. I, p. 520; Minutes of hearing held on, and Order dated, February 22, 2024, Docket – Vol. I, pp. 521 to 522.
25 Exhibit "P-20" (on a separate binder).
26 Docket – Vol. II, pp. 553 to 568.
27 *Id.* at 632 to 635.
28 *Id.* at 645 to 646.
29 *Id.* at 746 to 748.
30 Docket – Vol. I, pp. 441 to 448; Minutes of hearing held on, and Order dated, September 19, 2024, Docket – Vol. II, pp. 709 to 710.
31 Docket – Vol. II, pp. 712 to 717.
32 *Id.* at 721 to 726.
33 *Id.* at 730 to 731.

Respondent filed his *Manifestation* on January 15, 2025,[34] stating that he is adopting the arguments raised in his *Answer* dated August 8, 2023 as his *Memorandum*; while, petitioner's *Memorandum* was filed on May 8, 2025.[35]

This case was considered submitted for decision on May 15, 2025.[36]

THE STIPULATED ISSUE

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

> Whether or not respondent's assessments against petitioner for deficiency income tax, VAT, WTC, EWT, DST, IAET, and compromise penalties for CY 2018 in the aggregate amount of ₱767,903,021.47, inclusive of surcharge, interest, are valid.[37]

Petitioner's argument:

Petitioner argues that the deficiency tax assessments against it for CY 2018 are null and void for having been issued in violation of its right to due process; that respondent's right to assess petitioner's alleged deficiency income tax, VAT, WTC, and EWT for CY 2018 had already prescribed; and, that respondent's deficiency tax assessments against petitioner for CY 2018 are devoid of legal and factual bases.

Respondent's counter-arguments:

In his *Answer*, respondent contends that petitioner's right to due process was not violated; that the FLD contained an unequivocal demand for petitioner to pay the deficiency taxes due; that the period to assess petitioner has not yet prescribed; that petitioner is liable for deficiency income tax, VAT, WTC, EWT, DST, IAET and compromise penalties for CY 2018; and that the assessment is based on fact and law.

THE COURT'S RULING

The present *Petition for Review* has partial merit.

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[34] Docket – Vol. II, pp. 733 to 735.
[35] *Id.* at 750 to 802.
[36] Minute Resolution dated May 15, 2025, Docket – Vol. II.
[37] Issue, JSFI, Docket – Vol. I p. 484.

The FLD and Final Assessment Notices contained an unequivocal demand for petitioner to pay deficiency taxes.

Petitioner argues that the FLD merely requested, rather than demanded the payment of its deficiency taxes. It states that the absence of an imperative and unequivocal demand for the payment of deficiency taxes in respondent's FLD, the deficiency tax assessments against it for CY 2018 are null and void.

On the other hand, respondent contends that a clear demand was given to petitioner through the FLD. He insists that the phrase "you are requested to pay" corresponds to petitioner's mode of payment which is through duly authorized agent bank. It does not refer to the demand of respondent to petitioner to pay the deficiency taxes within the time stated in the assessment notice. He further avers that there is no question that the petitioner is required to pay the deficiency taxes. Only the mode of payment is requested by respondent to be followed.

The Court rules in favor of the respondent.

In *Commissioner of Internal Revenue vs. Fitness By Design, Inc.* (Fitness By Design case),[38] the Supreme Court describes a final assessment in this wise:

> A final assessment is a notice 'to the effect that the amount therein stated is due as tax and a demand for payment thereof.' This demand for payment signals the time 'when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies[.]' Thus, it must be 'sent to and received by the taxpayer, and must demand payment of the taxes described therein within a specific period.'
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> The disputed Final Assessment Notice is not a valid assessment.
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> **First, it lacks the definite amount of tax liability** for which respondent is accountable. It does not purport to be a demand for payment of the tax due, which a final assessment notice should supposedly be. An assessment, in the context of the National Internal Revenue Code, is a 'written notice and demand made by the [Bureau of Internal Revenue] on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed.' Although the disputed notice provides for the computations of respondent's tax liability, the amount remains indefinite. It only provides that the tax due is still subject to modification, depending on the date of payment. Thus:

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[38] G.R. No. 215957, November 9, 2016.

> The complete details covering the aforementioned discrepancies established during the investigation of this case are shown in the accompanying Annex 1 of this Notice. The 50% surcharge and 20% interest have been imposed pursuant to Sections 248 and 249 (B) of the [National Internal Revenue Code], as amended. **Please note, *however, that the interest and the total amount due will have to be adjusted if prior or beyond April 15, 2004.*** (Emphasis Supplied)

Second, there are no due dates in the Final Assessment Notice. This negates petitioner's demand for payment. Petitioner's contention that April 15, 2004 should be regarded as the actual due date cannot be accepted. **The last paragraph of the Final Assessment Notice states that the due dates for payment were supposedly reflected in the attached assessment**:

> In view thereof, **you are *requested to pay* your aforesaid deficiency internal revenue tax liabilities** through the duly authorized agent bank in which you are enrolled *within the time shown in the enclosed assessment notice*. (Emphasis in the original)

However, based on the findings of the Court of Tax Appeals First Division, **the enclosed assessment pertained to remained unaccomplished**. (*Emphases and underscoring added*)

It can be deduced from the foregoing that, in order for the *Assessment Notice* to be valid, it must contain the following: (1) it must demand a definite amount of tax liability; and, (2) it must provide a clear due date for payment.

In relation thereto, a demand is defined as "[t]he assertion of a legal right; a legal obligation asserted in the courts. An imperative request preferred by one person to another, under a claim of right, requiring the latter to do or yield something or to abstain from some act; **request for payment** of debt or amount due; an asking with authority, claiming or challenging as due."[39]

Based on the foregoing, a demand can be in the form of a *request* for payment.

In this case, the FLD dated May 4, 2022[40] contains the following statement:

> xxx **you are requested to pay** your aforesaid deficiency income tax liabilities through the duly authorized bank in which you are enrolled

[39] Black's Law Dictionary, Sixth Edition, p. 429 (Emphasis added).
[40] Exhibits "P-6" and "R-6", BIR Records – Folder II (Exhibit "R-7-1"), pp. 959 to 961.

> **within the time shown in the enclosed assessment notice**. *(Emphases added)*

However, unlike in the *Fitness By Design* case, the FAN in this case contains a specific due date, which is **June 30, 2022,**[41] as follows:

> IF YOU ARE AMENDABLE [SIC], **PAY THE TOTAL AMOUNT PAYABLE ON OR BEFORE <u>JUNE 30, 2022</u>** TO ANY AUTHORIZED AGENT BANK USING PAYMENT FORM (BIR FORM NO. 0605). *(Emphasis and underscoring added)*

Similar with the *Fitness By Design* case, the last paragraph of the FAN therein states that "xxx you are *requested to pay* your aforesaid deficiency internal revenue tax liabilities xxx." Respondent taxpayer therein argued that the FAN issued was a mere *request* for payment and not a demand for payment of tax liabilities. Interestingly, however, the Supreme Court did not take issue on the use of the word "request" and merely held that the absence of the due dates in the FAN negates the demand for payment.

Further, the use of the title "*Formal Letter of Demand*" immediately reveals that there is a demand. Thus, the use of the phrases "you are requested to pay" and "[i]f you are amendable [sic]" in the FLD/FAN does not negate respondent's demand for payment of deficiency tax.

Hence, there is no basis for petitioner's claim that the assessment notices do not indicate an imperative and unequivocal demand to pay tax liabilities.

Respondent's right to assess petitioner for deficiency income tax, VAT, WTC, and EWT is not barred by prescription, except for deficiency WTC for the month of January 2018

Petitioner argues that the assessments for deficiency income tax, VAT, WTC, and EWT for CY 2018, are null and void for having been issued beyond the three-year prescription period set forth in Section 203 of the NIRC of 1997, as amended.

Petitioner points out that Revenue Memorandum Circular (RMC) No. 34-2020, as amended by RMC Nos. 74-2020 and 77-2020, and as clarified in RMC No. 136-2020, which were issued to suspend the running of the three-

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[41] BIR Records – Folder II (Exhibit "R-7-1"), pp. 936 to 942.

year prescriptive period, did not validly extend the statute of limitation for the assessment of taxes under Section 203 of the NIRC of 1997, as amended.

In addition, petitioner claims that the subject RMCs, being mere administrative issuances, could not validly extend the prescription periods provided under the law. The RMCs allegedly sought to amend Section 203 of the NIRC of 1997, as amended, which provides that internal revenue taxes shall be assessed and collected within three years after the last day prescribed by law for the filing of the return, or from the day the tax return was actually filed, whichever is later.

On the other hand, respondent argues that as an alter ego of the President, the Secretary of Finance, through respondent, is, therefore, authorized by law to implement both Section 4(z) of Republic Act (R.A.) No. 11469 (Bayanihan to Heal as One Act)[42] and Section 4(tt) of R.A. No. 11494 (Bayanihan to Recover as One Act).[43]

Respondent submits that Article VII, Section 17 of the 1987 Constitution explicitly states that the President shall have control of all the executive departments, bureaus and offices. He contends that the powers delegated by the legislature to the President was effectively enforced and implemented by the Secretary of Finance through respondent.

According to respondent, Section 4(z) of R.A. No. 11469, Section 4(tt) of R.A. No. 11494 and RMC No. 34-2020, warrant the nationwide suspension of the statute of limitations under Sections 203 and 222 of the NIRC of 1997, as amended, for a period starting March 16, 2020, until the lifting of the State of National Emergency and for 60 days thereafter. Respondent continues that the suspension of the running of the statute of limitations shall likewise apply with respect to the issuance and service of assessment notices, warrants and enforcement and/or collection of deficiency taxes.

We agree with respondent.

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[42] AN ACT DECLARING THE EXISTENCE OF A NATIONAL EMERGENCY ARISING FROM THE CORONAVIRUS DISEASE 2019 (COVID-19) SITUATION AND A NATIONAL POLICY IN CONNECTION THEREWITH, AND AUTHORIZING THE PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES FOR A LIMITED PERIOD AND SUBJECT TO RESTRICTIONS, TO EXERCISE POWERS NECESSARY AND PROPER TO CARRY OUT THE DECLARED NATIONAL POLICY AND FOR OTHER PURPOSES, March 4, 2020.

[43] AN ACT PROVIDING FOR COVID-19 RESPONSE AND RECOVERY INTERVENTIONS AND PROVIDING MECHANISMS TO ACCELERATE THE RECOVERY AND BOLSTER THE RESILIENCY OF THE PHILIPPINE ECONOMY, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES, September 11, 2020.

In this regard, Section 203 of the NIRC of 1997, as amended, reads as follows:

> SEC. 203. *Period of Limitation Upon Assessment and Collection.* — **<u>Except as provided in Section 222</u>, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return**, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. **For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day**. *(Emphases and underscoring added)*

Based on the foregoing provision, it is clear that except as provided in Section 222 of the NIRC of 1997, as amended, the government is mandated to assess internal revenue taxes within three years from the last day prescribed by law for the filing of the tax return or the actual date of filing of such return, whichever comes later.[44] As a corollary, an assessment notice issued after the three-year prescriptive period is not valid and effective.[45]

In relation to the filing of the income tax return, Section 77(B) of the NIRC of 1997, as amended, reads:

> SEC. 77. *Place and Time of Filing and Payment of Quarterly Corporate Income Tax.* –
>
> xxx xxx xxx
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> **(B)** ***Time of Filing the Income Tax Return.*** – The corporate quarterly declaration shall be filed within sixty (60) days following the close of each of the first three (3) quarters of the taxable year. The final adjustment return shall be filed on or before the fifteenth (15th) day of April, or on or before the fifteenth (15th) day of the fourth (4th) month following the close of the fiscal year, as the case may be.

In connection with the return and payment of VAT, Section 114(A) of the NIRC of 1997, as amended, provides:

> SEC. 114. *Return and Payment of Value-added Tax.* —
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> (A) *In General.* – **Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each**

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44 Refer to *Commissioner of Internal Revenue vs. Kudos Metal Corporation*, G.R. No. 178087, May 5, 2010.

45 *Commissioner of Internal Revenue vs. Next Mobile, Inc.*, G.R. No. 212825, December 7, 2015.

> **taxpayer**: *Provided, however*, That VAT-registered persons shall pay the value-added tax on a monthly basis: xxx. *(Emphasis added)*

Based on the foregoing provision, petitioner's Quarterly VAT Returns for the first to fourth quarters of CY 2018 should have been filed on or before: (1) April 25, 2018, for the first quarter; (2) July 25, 2018, for the second quarter; (3) October 25, 2018, for the third quarter; and, (4) January 25, 2019, for the fourth quarter.

With regard to monthly remittance of WTC, Section 2.81 of Revenue Regulations (RR) No. 2-98,[46] as amended by RR No. 6-2001,[47] provides that BIR Form No. 1601-C shall be filed and the tax paid on or before the 10th day of the month following the month in which the withholding was made, except for taxes withheld for December which shall be filed and paid on or before January 15 of the succeeding year, and that, with respect to taxpayers who availed of the electronic filing and payment system (EFPS), the deadline for electronically filing the aforesaid withholding tax return and paying the tax due thereon via the EFPS shall be five days later than the said deadlines, to wit:

> Sec. 2.81. *FILING OF RETURN AND PAYMENT OF INCOME TAX WITHHELD ON COMPENSATION (FORM NO. 1601).* — Every person required to deduct and withhold the tax on compensation, including large taxpayers as determined by the Commissioner, shall make a return and pay such tax on or before the 10th day of the month following the month in which withholding was made to any authorized agent bank within the Revenue District Office (RDO) or in places where there are no agent banks, to the Revenue District Officer of the City or Municipality where the withholding agent/employer's legal residence or place of business or office is located; provided, however, that taxes withheld from the last compensation (December) for the calendar year shall be paid not later than January 15 of the succeeding year; Provided, however, that with respect to taxpayers, whether large or non-large, who availed of the EFPS, the deadline for electronically filing the aforesaid withholding tax return and paying the tax due thereon via the EFPS shall be five (5) days later than the deadlines set above.

It should be noted, however, that for taxpayers who availed of the EFPS, existing EFPS regulations provide for different deadlines for

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[46] 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.

[47] SUBJECT: Amending Pertinent Provisions of Revenue Regulations Nos. 1-98, 2-98, as Amended, and 7-95, as Amended, and Revenue Memorandum Circular No. 1-98 Relative to the Inclusion of Additional Taxpayers to be Subject to Final Withholding Tax, Revision of the Withholding Tax Rates on Certain Income Payments Subject to Creditable Withholding Tax, Time for the Filing of Various Tax Returns and Payment of the Taxes Due Thereon and Others.

electronically filing BIR Form No. 1601-C. Relative thereto, Section 7 of RR No. 9-2001,[48] as amended by RR No. 26-2002,[49] provides for the staggered filing of returns of taxpayers enrolled in the EFPS based on industry classification. For petitioner, whose Line of Business is "REAL ESTATE BUYING, DEVELOPING, SUBDIVIDING AND SELLING",[50] and thus, classified under Group C, its monthly WTC Returns shall be filed 13 days after the end of each month, to wit:

> Section 7. TIME OF FILING OF RETURN. - For purposes of filing returns under the EFPS, the taxpayers classified under the following business industries shall be required to file the Monthly Withholding Tax Returns, except withholding of Value-Added Tax; Monthly VAT Declarations; and Monthly Percentage Tax Returns, on or before the dates prescribed and presented herein-below:

BUSINESS INDUSTRY	MONTHLY WITHHOLDING TAX RETURNS EXCEPT WITHHOLDING OF VALUE ADDED TAX	MONTHLY VAT DECLARATIONS AND MONTHLY PERCENTAGE TAX RETURNS
xxx	xxx	xxx
Group C Retail Sale Wholesale Trade and Commission Trade Sale, Maintenance, Repair of Motor Vehicle, Sale of Automotive Fuel Collection, Purification and Distribution of Water Computer and Related Activities **Real Estate Activities**	• **Thirteen (13) days following end of the month.**	xxx
xxx	xxx	xxx

> xxx xxx xxx
>
> For purposes of these regulations, the industry of the taxpayer is its primary line of business or the primary purpose of its existence as stated in the Articles of Incorporation, for corporate taxpayers. *(Emphasis added)*

As to the quarterly remittance of the EWT, Section 58(A) of the NIRC of 1997, as amended, reads:

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[48] SUBJECT: sElectronic Filing of Tax Returns and Payment of Taxes.
[49] SUBJECT: Amending Further Revenue Regulations No. 9-2001, as Amended by Revenue Regulations No. 2-2002 and Revenue Regulations No. 9-2002, Providing for the Staggered Filing of Returns of Taxpayers Enrolled in the Electronic Filing and Payment System (EFPS) Based on Industry Classification.
[50] Exhibit "P-2", Docket – Vol. II, at p. 658.

> SEC. 58. *Return and Payment of Taxes Withheld at Source.* —
>
> (A) *Quarterly Returns and Payments of Taxes Withheld.* – xxx xxx xxx
>
> xxx xxx xxx
>
> **The return for final and creditable withholding taxes shall be filed and the payment made not later than the last day of the month following the close of the quarter during which withholding was made**. *(Emphasis added)*

Also, Section 2.58 of RR No. 2-98, as last amended by RR No. 11-2018,[51] provides:

> ***SECTION 2.58. Returns and Payment of Taxes Withheld at Source.***
>
> (A) ***Manner, Venue and Time of Filing of Withholding Tax Returns and Payment of Taxes Withheld at Source*** - Taxpayers mandated to electronically file and pay shall use the BIR's electronic system, while those not mandated has the option to either use the said electronic system, or file with the Authorized Agent Banks (AABs) under the jurisdiction of the Revenue District Office where they are registered. Withholding agents located at municipalities where there is no AAB, the returns shall be filed with the Revenue Collection Officer assigned in the said municipality. **The filing of the withholding tax returns (BIR Form No. 1601EQ for creditable withholding tax** and Form Nos. 1602 for final tax on interest on bank deposits, 1603 for final tax withheld on fringe benefits, and 1601FQ for all other final withholding taxes) **and payment of the taxes withheld at source shall be made not later than the last day of the month following the close of the quarter during which the withholding was made**.
>
> For this purpose, **the quarter shall follow the calendar quarter, e.g., for taxes withheld during the quarter ending March 31, the same shall be remitted by the withholding agent on or before April 30.** The return filed shall be accompanied by the Quarterly Alphabetical List of Payees (QAP), reflecting the name of income payees, Taxpayer Identification Number (TIN), the amount of income paid segregated per month with total for the quarter (all income payments prescribed as subject to withholding tax under these regulations, whether actually subjected to withholding tax or not subjected due to exemption), and the total amount of taxes withheld, if any.

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[51] 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.

> Considering that taxes withheld by the withholding agents are held in trust for the government and its availability is an imperious necessity to ensure sufficient cash inflow to the National Treasury, withholding agents shall file BIR Monthly Remittance Form (BIR Form No. 0619E and/or 0619F) every tenth (10th) day of the following month when the withholding is made, regardless of the amount withheld. For withholding agents using EFPS facility, the due date is on the fifteenth (15th) day of the following month. Withholding agents with zero remittance are still required to use and file the same form. *(Emphasis added)*

Correspondingly, for purposes of the subject income tax, VAT, WTC and EWT assessments against petitioner for CY 2018, the end of the three-year prescriptive period under Section 203 of the NIRC of 1997 is respectively determined as follows:

Kind of Tax & Period	**Actual date of filing of the pertinent tax return**	**Reckoning date of the three-year prescriptive period**[52]	**End of the three-year prescriptive period**
Income tax – CY 2018	Apr. 14, 2019[53]	Apr. 15, 2019	**Apr. 25, 2022**
VAT – 1st Quarter 2018	Apr. 21, 2018[54]	Apr. 25, 2018	**Apr. 25, 2021**
VAT – 2nd Quarter 2018	July 25, 2018[55]	July 25, 2018	**July 25, 2021**
VAT – 3rd Quarter 2018	Oct. 24, 2018[56]	Oct. 25, 2018	**Oct. 25, 2021**
VAT – 4th Quarter 2018	May 23, 2019[57]	May 23, 2019	May 23, 2022
WTC – Jan. 2018	Feb. 7, 2018[58]	Feb. 13, 2018	**Feb. 13, 2021**
WTC – Feb. 2018	Mar. 7, 2018[59]	Mar. 13, 2018	**Mar. 13, 2021**
WTC – Mar. 2018	Apr. 9, 2018[60]	Apr. 13, 2018	**Apr. 13, 2021**
WTC – Apr. 2018	May 9, 2018[61]	May 14, 2018[62]	**May 14, 2021**
WTC – May 2018	June 9, 2018[63]	June 13, 2018	**June 13, 2021**
WTC – June 2018	July 10, 2018[64]	July 13, 2018	**July 13, 2021**
WTC – July 2018	Aug. 10, 2018[65]	Aug. 13, 2018	**Aug. 13, 2021**
WTC – Aug. 2018	Sept. 7, 2018[66]	Sept. 13, 2018	**Sept. 13, 2021**
WTC – Sept. 2018	Oct. 10, 2018[67]	Oct. 15, 2018[68]	**Oct. 15, 2021**

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52 The last day prescribed by law for the filing of the tax return or actual date of filing the same, whichever comes later.
53 Exhibit "P-9", Docket – Vol. I, pp. 186 to 195.
54 Exhibit "P-10-1", *Id.* at 251 to 252.
55 Exhibit "P-10-2", *Id.* at 253 to 254.
56 Exhibit "P-10-3", *Id.* at 255 to 256.
57 Exhibit "P-10-4", *Id.* at 257 to 258.
58 Exhibit "P-12-1", *Id.* at 267 to 268.
59 Exhibit "P-12-2", Docket – Vol. I, pp. 269 to 270.
60 Exhibit "P-12-3", *Id.* at 271 to 272.
61 Exhibit "P-12-4", *Id.* at 273 to 274.
62 May 13, 2018 fell on a Sunday.
63 Exhibit "P-12-5", Docket – Vol. I, pp. 275 to 276.
64 Exhibit "P-12-6", *Id.* at 277 to 278.
65 Exhibit "P-12-7", *Id.* at 279 to 280.
66 Exhibit "P-12-8", *Id.* at 281 to 282.
67 Exhibit "P-12-9", *Id.* at 283 to 284.

Kind of Tax & Period	**Actual date of filing of the pertinent tax return**	**Reckoning date of the three-year prescriptive period**[69]	**End of the three-year prescriptive period**
WTC – Oct. 2018	Nov. 9, 2018[70]	Nov. 13, 2018	**Nov. 13, 2021**
WTC – Nov. 2018	Dec. 10, 2018[71]	Dec. 13, 2018	**Dec. 13, 2021**
WTC – Dec. 2018	Jan. 10, 2019[72]	Jan. 14, 2019[73]	**Jan. 14, 2022**
EWT – 1st Quarter 2018	Apr. 30, 2018[74]	Apr. 30, 2018	**Apr. 30, 2021**
EWT – 2nd Quarter 2018	July 19, 2018[75]	July 31, 2018	**July 31, 2021**
EWT – 3rd Quarter 2018	Oct. 12, 2018[76]	Oct. 31, 2018	**Oct. 31, 2021**
EWT – 4th Quarter 2018	Jan. 11, 2019[77]	Jan. 31, 2019	**Jan. 31, 2022**

Thus, considering that the FLD with attached Details of Discrepancies was issued and received by petitioner on May 4, 2022,[78] the right of the BIR to assess deficiency income tax for CY 2018, VAT for the first to third quarters of CY 2018, EWT for the first to fourth quarters of CY 2018, and WTC for the period of January to December 2018, had already prescribed pursuant to Section 203 of the NIRC of 1997, as amended.

Note that pursuant to Section 4(z) of R.A. No. 11469, the statutory deadlines and timeliness for the filing and submission of any document were extended, to wit:

> SEC. 4. *Authorized Powers.* – Pursuant to Article VI, Section 23 (2) of the Constitution, the President is hereby authorized to exercise powers that are necessary and proper to carry out the declared national policy. The President shall have the power to adopt the following temporary emergency measures to respond to crisis brought by the pandemic:
>
> xxx xxx xxx
>
> (z) **Move statutory deadlines and timelines for the filing and submission of any document**, the payment of taxes, fees, and other charges required by law, and the grant of any benefit, in order to ease the burden on individuals under Community Quarantine; *(Emphasis added)*

Relative thereto, it must be noted that Section 244 of the NIRC of 1997, as amended, reads as follows, to wit:

68 October 13, 2018 fell on a Saturday.
69 The last day prescribed by law for the filing of the tax return or actual date of filing the same, whichever comes later.
70 Exhibit "P-12-10", Docket – Vol. I, pp. 285 to 286.
71 Exhibit "P-12-11", *Id.* at 287 to 288.
72 Exhibit "P-12-12", *Id.* at 289 to 290.
73 January 13, 2019 fell on a Sunday.
74 Exhibit "P-11-1", Docket – Vol. I, pp. 259 to 260.
75 Exhibit "P-11-2", *Id.* at 261 to 262.
76 Exhibit "P-11-3", *Id.* at 263 to 264.
77 Exhibit "P-11-4", *Id.* at 265 to 266.
78 Exhibits "P-6", "R-6" and "R-6-1", BIR Records – Folder II (Exhibit "R-7-1"), pp. 951 to 961.

> SEC. 244. *Authority of Secretary of Finance to Promulgate Rules and Regulations.* – The **Secretary of Finance**, upon recommendation of the Commissioner, shall **promulgate all needful rules and regulations for the effective enforcement of the provisions of this Code**. *(Emphases added)*

The Supreme Court *En Banc* confirmed the power of the Secretary of Finance to promulgate rules and regulations for the effective enforcement of the NIRC of 1997, as amended, in the case of *La Suerte Cigar & Cigarette Factory vs. Court of Appeals, et al., et seq.*,[79] viz:

> The power of taxation is inherently legislative and may be imposed or revoked only by the legislature. Moreover, this plenary power of taxation cannot be delegated by Congress to any other branch of government or private persons, unless its delegation is authorized by the Constitution itself. Hence, the discretion to ascertain the following — (a) basis, amount, or rate of tax; (b) person or property that is subject to tax; (c) exemptions and exclusions from tax; and (d) manner of collecting the tax — may not be delegated away by Congress.
>
> However, **it is well-settled that the power to fill in the details and manner as to the enforcement and administration of a law may be delegated to various specialized administrative agencies like the Secretary of Finance in this case.**
>
> This court in *Maceda v. Macaraig, Jr.* explained the rationale behind the permissible delegation of legislative powers to specialized agencies like the Secretary of Finance:
>
>> **The latest in our jurisprudence indicates that delegation of legislative power has become the rule and its non-delegation the exception. The reason is the increasing complexity of modern life and many technical fields of governmental functions as in matters pertaining to tax exemptions.** This is coupled by the growing inability of the legislature to cope directly with the many problems demanding its attention. The growth of society has ramified its activities and created peculiar and sophisticated problems that the legislature cannot be expected reasonably to comprehend. **Specialization even in legislation has become necessary. To many of the problems attendant upon present day undertakings, the legislature may not have the competence, let alone the interest and the time, to provide the required direct and efficacious, not to say specific solutions.**
>
> Thus, rules and regulations implementing the law are designed to fill in the details or to make explicit what is general, which otherwise cannot all be incorporated in the provision of the law. **Such rules and regulations, when promulgated in pursuance of the procedure or**

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[79] G.R. Nos. 125346, 136328-29, 144942, 148605, 158197 and 165499, November 11, 2014.

> **authority conferred upon the administrative agency by law, "deserve to be given weight and respect by the courts in view of the rule-making authority given to those who formulate them and their specific expertise in their respective fields."** To be valid, a revenue regulation must be within the scope of statutory authority or standard granted by the legislature. Specifically, the regulation must (1) be germane to the object and purpose of the law; (2) not contradict, but conform to, the standards the law prescribes; and (3) be issued for the sole purpose of carrying into effect the general provisions of our tax laws. *(Emphases and underscoring added)*

Clearly, the Secretary of Finance has delegated legislative power to establish the rules and regulations necessary to ensure that the provisions of our tax laws are carried into effect.

To implement Section 4(z) of R.A. No. 11469, several RRs and RMCs were issued by the Secretary of Finance and respondent, with respect to the suspension of the running of the statute of limitations in the assessment of taxes under Sections 203 and 222, pursuant to Section 223,[80] of the NIRC of 1997, as amended, to wit:

Issuance	Date	Subject
RR No. 7-2020	Mar. 27, 2020	Implementing Section 4 (z) of Republic Act No. 11469, otherwise known as "Bayanihan to Heal As One Act", particularly on the extension of statutory deadlines and timelines for the filing and submission of any document and the payment of taxes
RMC No. 34-2020	Mar. 27, 2020	SUSPENDING THE RUNNING OF THE STATUTE OF LIMITATIONS IN THE ASSESSMENT AND COLLECTION OF TAXES PURSUANT TO SECTION 223 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, DUE TO THE DECLARATION OF A NATIONAL EMERGENCY FROM THE CORONA VIRUS DISEASE 2019 (COVID-19) SITUATION
RMC No. 39-2020	Apr. 7, 2020	Further Extension of the Due Dates for the Submission and/or Filing of Certain Documents and/or Returns as well as Payment of Certain Taxes under Revenue Regulations No. 7-2020
RR No. 10-2020	Apr. 9, 2020	Amends Section 2 of Revenue Regulations No. 7-2020 relative to the extension of statutory deadlines and timelines for the filing and submission of any document and the payment of taxes pursuant to Section 4 (z) of Republic Act No. 11469, otherwise known as "Bayanihan to Heal As One Act"

[80] SEC. 223. *Suspension of Running of Statute of Limitations.* – **The running of the Statute of Limitations provided in Sections 203 and 222 on the making of assessment** and the beginning of distraint or levy or a proceeding in court for collection, in respect of any deficiency, **shall be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning the distraint or levy or a proceeding in court and for sixty (60) days thereafter**; when the taxpayer requests for a reinvestigation which is granted by the Commissioner; when the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed or collected: *Provided*, That, if the taxpayer informs the Commissioner of any change in address, the running of the Statute of Limitations will not be suspended; when the warrant of distraint or levy is duly served upon the taxpayer, his authorized representative, or a member of his household with sufficient discretion, and no property could be located; and when the taxpayer is out of the Philippines. *(Emphases added)*

Issuance	Date	Subject
RR No. 11-2020	Apr. 29, 2020	Amends Section 2 of Revenue Regulations No. 10-2020 relative to the extension of statutory deadlines and timelines for the filing and submission of any document and the payment of taxes pursuant to Section 4 (z) of Republic Act No. 11469, otherwise known as "Bayanihan to Heal As One Act"
RR No. 12-2020	May 14, 2020	Amends Revenue Regulations No. 10-2020, as amended by Revenue Regulations No. 11-2020, relative to the extension of statutory deadlines and timelines for the filing and submission of any document and the payment of taxes pursuant to Section 4 (z) of Republic Act No. 11469, otherwise known as "Bayanihan to Heal As One Act"
RMC No. 74-2020	July 15, 2020	Amending and/or Clarifying Certain Provisions of RMC 34-2020
RMC No. 77-2020	July 30, 2020	Clarifying ECQ as Referred to under RMC No. 74-2020
RMC No. 136-2020	Dec. 7, 2020	Clarification on the Suspension of the Statute of Limitation Provided Under Revenue Regulations (RR) No. 11-2020
RMC No. 52-2021	Apr. 14, 2021	SUSPENSION OF THE RUNNING OF THE STATUTE OF LIMITATIONS ON ASSESSMENT AND COLLECTION OF TAXES PURSUANT TO SECTION 223 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, DUE TO THE DECLARATION OF ENHANCED COMMUNITY QUARANTINE IN METRO MANILA, BULACAN, CAVITE, LAGUNA, AND RIZAL (NCR PLUS), AND OTHER APPLICABLE JURISDICTIONS
RMC No. 80-2021	June 25, 2021	Clarifying the Suspension of the Statute of Limitations on Assessment and Collection of Taxes Due to the Declaration of Quarantine in Various Areas in the Country
RMC No. 93-2021	Aug. 6, 2021	SUSPENSION OF THE RUNNING OF THE STATUTE OF LIMITATIONS ON ASSESSMENT AND COLLECTION OF TAXES PURSUANT TO SECTION 223 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, DUE TO THE DECLARATION OF ENHANCED COMMUNITY QUARANTINE (ECQ) AND MODIFIED ECQ (MECQ) IN THE NATIONAL CAPITAL REGION (NCR) AND OTHER AREAS OF THE COUNTRY

Anent the authority of respondent to extend the period of statutory deadlines set forth by the Secretary of Finance in RR No. 7-2020 (which includes *"Suspension of Running of Limitation under Section[s] 203 and 222 pursuant to Section 223 of the Tax Code of 1997 as amended"*), Section 4 thereof reads as follows:

> **SECTION 4. FURTHER EXTENSION.** – The extension of the statutory deadlines set in these Regulations may be further extended by the Commissioner of Internal Revenue, if the circumstances warrant for such an extension or as may be directed by the Secretary of Finance.

Thus, on the basis of the foregoing enumerated issuances, the running of the statute of limitations under Sections 203 and 222, pursuant to Section 223, all of the NIRC of 1997, as amended, was validly suspended from March 16, 2020, and for 60 days after the lifting of the quarantine. In particular, RR Nos. 7-2020, 10-2020, and 11-2020 provide that the **statutory deadlines for the submission of *Assessment Notices* shall be suspended** for the period of the emergency starting from March 16, 2020.

From May 1, 2020 to May 15, 2020, the Inter-Agency Task Force (IATF) for the Management of Emerging Infectious Diseases continued to place the National Capital Region (NCR) under ECQ.[81] On May 15, 2020, IATF Resolution No. 37 was issued placing all Highly Urbanized Cities (HUCs) of the NCR and the Municipality of Pateros under MECQ until May 31, 2020, without prejudice to the declaration of localized Enhanced Community Quarantine in critical areas. All HUCs of the NCR and the Municipality of Pateros was then placed under General Community Quarantine (GCQ) beginning June 1, 2020.[82] Subsequently, on August 3, 2020, NCR was again placed under MECQ effective from August 4, 2020 to August 18, 2020.[83] The IATF then placed NCR under ECQ from March 29, 2021 to April 11, 2021,[84] then under MECQ from April 12, 2021 to May 14, 2021,[85] under ECQ from August 6, 2021 to August 20, 2021,[86] and MECQ beginning August 21, 2021 to September 15, 2021.[87]

The computation of the period of suspension was clarified in RMC No. 136-2020, issued on December 7, 2020, which provides as follows:

> Item 32 in the matrix provided under RR No. 11-2020 pertains to the suspension of the statute of limitation provided under Sections 203 and 222 of the Tax Code. The said matrix provided that the suspension shall start from March 16, 2020, when the state of emergency was declared due to COVID-19 virus until sixty days after the lifting of the quarantine. With such suspension, the counting of the three (3)-year prescriptive period for the period to assess and the five (5)-year period to collect, shall exclude the number of days covered by the period of suspension, which is a total of one hundred thirty-seven (137) days.
>
> To illustrate:

	Original Prescriptive Date	**New Prescriptive Date**
Case 1	March 15, 2020	March 15, 2020
Case 2	March 16, 2020	July 31, 2020
Case 3	April 15, 2020	August 30, 2020

81 IATF Resolution Nos. 28 and 29 dated April 23, 2020 and April 27, 2020, respectively.
82 IATF Resolution No. 41 dated May 29, 2020.
83 Memorandum from the Executive Secretary dated August 3, 2020.
84 IATF Resolution Nos. 107-A and 108-A dated March 29, 2021 and April 4, 2021, respectively.
85 IATF Resolution Nos. 109-A and 113-A dated April 10, 2021 and April 29, 2021, respectively.
86 IATF Resolution No. 130-A, dated July 29, 2021.
87 IATF Resolution Nos. 134, 135-A, and 137, dated August 19, 2021, August 26, 2021, and September 7, 2021, respectively.

Case 4	June 15, 2020	October 30, 2020
Case 5	July 15, 2020	November 29, 2020
Case 6	April 15, 2021	August 30, 2021

Moreover, RMC No. 93-2021 emphasized that the running of the statute of limitations for assessment and collection of deficiency taxes is suspended in the affected jurisdictions while the ECQ and/or MECQ ws in effect, including any extension/s thereof, and for 60 days thereafter; and, that the suspension of the running of the statute of limitations shall apply with respect to the **issuance and service** of assessment notices, warrants and enforcement, and/or collection of deficiency taxes.

Therefore, in line with Section 223 of the NIRC of 1997, as amended, the prescriptive period for assessment and/or collection of internal revenue taxes under Sections 203 and 222 of the NIRC of 1997, as amended, had been effectively extended by the number of days covered by the ECQ and/or MECQ declarations, which is a total of 420 days, as follows:

Period when NCR was placed under ECQ/MECQ	Number of days under ECQ/MECQ	Additional number of days pursuant to Section 223 of the NIRC of 1997, as amended	Total number of days suspended	Suspension Period (dates inclusive)
Mar. 16, 2020 to May 31, 2020	77	60	137	Mar. 16, 2020 to July 30, 2020
Aug. 4, 2020 to Aug. 18, 2020	15	60	75	Aug. 4, 2020 to Oct. 17, 2020
Mar. 29, 2021 to May 14, 2021	47	60	107	Mar. 29, 2021 to July 13, 2021
Aug. 6, 2021 to Sept. 15, 2021	41	60	101	Aug. 6, 2021 to Nov. 14, 2021
Total number of days	**180**	**240**	**420**	

The last day of the prescriptive period after considering the suspensions brought about by the declarations of ECQ/MECQ shall then be computed as follows:

Last day of the prescriptive period to assess and/or collect after considering the suspensions	=	Original Prescriptive Date + Total Number of Days Suspended

Hence, the 420 days will be added to the original prescriptive period. Accordingly, the end of the BIR's right to assess was extended as follows:

Kind of Tax & Period	Original prescriptive period	Extended prescriptive period
Income tax – CY 2018	Apr. 15, 2022	June 9, 2023
VAT – 1st Quarter 2018	Apr. 25, 2021	June 19, 2022
VAT – 2nd Quarter 2018	July 25, 2021	Sept. 18, 2022
VAT – 3rd Quarter 2018	Oct. 25, 2021	Dec. 19, 2022
VAT – 4th Quarter 2018	May 23, 2022	July 17, 2023
WTC – Jan. 2018	Feb. 13, 2021	**Apr. 9, 2022 (prescribed)**
WTC – Feb. 2018	Mar. 13, 2021	May 7, 2022

Kind of Tax & Period	Original prescriptive period	Extended prescriptive period
WTC – Mar. 2018	Apr. 13, 2021	June 7, 2022
WTC – Apr. 2018	May 14, 2021	July 8, 2022
WTC – May 2018	June 13, 2021	Aug. 7, 2022
WTC – June 2018	July 13, 2021	Sept. 6, 2022
WTC – July 2018	Aug. 13, 2021	Oct. 7, 2022
WTC – Aug. 2018	Sept. 13, 2021	Nov. 7, 2022
WTC – Sept. 2018	Oct. 15, 2021	Dec. 9, 2022
WTC – Oct. 2018	Nov. 13, 2021	Jan. 7, 2023
WTC – Nov. 2018	Dec. 13, 2021	Feb. 6, 2023
WTC – Dec. 2018	Jan. 14, 2022	Mar. 10, 2023
EWT – 1st Quarter 2018	Apr. 30, 2021	June 24, 2022
EWT – 2nd Quarter 2018	July 31, 2021	Sept. 24, 2022
EWT – 3rd Quarter 2018	Oct. 31, 2021	Dec. 25, 2022
EWT – 4th Quarter 2018	Jan. 31, 2022	Mar. 27, 2023

In the present case, the FLD with attached Details of Discrepancies was issued and received on May 4, 2022;[88] hence, it was issued to petitioner within the extended prescriptive period, except for the deficiency WTC for the month of January 2018.

Petitioner is partially liable for the subject tax assessments

Per respondent's FLD with attached Details of Discrepancies,[89] and FAN,[90] petitioner was assessed for deficiency income tax, VAT, WTC, EWT, DST, IAET and compromise penalties, for CY 2018, in the total amount of ₱767,903,021.47, including surcharges and interests, as summarized below:

	Basic	Surcharge	Interest	Total
Income Tax	₱162,497,112.00		₱ 62,559,162.13	**₱225,056,274.13**
VAT	35,784,219.76		13,658,787.66	**49,443,007.42**
WTC	1,256,235.43		521,218.00	**1,777,453.43**
EWT	689,051.06		629,405.67	**1,318,456.73**
DST	53,653,386.00		22,437,405.04	**76,090,791.04**
IAET	248,631,159.20	₱62,157,789.80	103,158,089.72	**413,947,038.72**
Compromise Penalty	270,000.00			**270,000.00**
Total				**₱767,903,021.47**

I. Deficiency Income Tax

Petitioner was assessed for deficiency income tax for CY 2018 in the amount of ₱225,056,274.13, computed as follows:[91]

[88] Exhibits "P-6", "R-6" and "R-6-1", BIR Records – Folder II (Exhibit "R-7-1"), pp. 951 to 961.
[89] *Ibid.*
[90] BIR Records – Folder II (Exhibit "R-7-1"), pp. 936 to 942.
[91] Exhibit "P-6", BIR Records – Folder II (Exhibit "R-7-1"), at p. 961.

	EXEMPT	REGULAR
1. TAXABLE INCOME	₱763,503,361.00	₱ -
2. ADD/LESS: AUDIT ADJUSTMENTS		
a. Adjustment to Cost of Services		8,833,073.01
b. Adjustment to Itemized Deductions		246,438,503.59
c. Rent income subject to 30% RCIT		286,385,466.30
3. TAXABLE NET INCOME/ (LOSS)	₱763,503,361.00	₱ 541,657,042.90
Tax Rate	0%	30%
4. INCOME TAX DUE/MINIMUM CORPORATE INCOME TAX (MCIT)		₱ 162,497,112.00
5. LESS:		
Prior Year's Excess Credits		1,157,567.00
MCIT		(199,733.00)
Total Creditable Tax Withheld (BIR 2307)		429,628.00
Income Tax Carried Over to 2019		(1,387,462.00)
Net Tax Credits/Payments		-
6. BASIC DEFICIENCY INCOME TAX/(OVERPAYMENT)		**₱ 162,497,112.00**
7. ADD:		
a. Surcharge		
b. Interest @12% (4/16/2019 to 6/30/2022) 1171 days		62,559,162.13
8. TOTAL DEFICIENCY INCOME TAX/ (OVERPAYMENT)		**₱ 225,056,274.13**

Notably, the income tax assessment arose from the following items:

a. Adjustment to Cost of Service (COS)	₱ 8,833,073.01
b. Adjustment to Itemized Deductions	246,438,503.59
c. Rent income subject to 30% RCIT	286,385,466.30
d. Minimum Corporate Income Tax (MCIT)	199,733.00
e. Income tax carried over to CY 2019	1,387,462.00

a. Adjustment to Cost of Service – ₱8,833,073.01; and
b. Adjustment to Itemized Deductions – ₱246,438,503.59

Per respondent, these expenses were claimed by petitioner as deductions under the regular rate of 30%, but upon investigation as shown by the itemized summary in the income tax return (ITR), some of these expenses should be recognized on the exempt activities and since no supporting documents were submitted to show that these expenses were directly attributable to its regular activities, the assessment is retained pursuant to Section 34 of the NIRC of 1997, as amended. These expenses were moved to its rightful activity and the Cost of Services (COS) and General Administrative Expenses (GAE) recognized under the regular rate was adjusted by respondent as follows:[92]

[92] Exhibit "P-6", BIR Records – Folder II (Exhibit "R-7-1"), at p. 958.

	Exempt (Sales from Gaming Operations)		Regular (Lease Income of Parking Areas with NCHI (Note 17b in AFS))		Total	Amount Should be in RCIT (Total Cost or Expense/0.30%)	Audit Adjustments (Regular-Amount should be in RCIT)
Sales	₱1,256,347,723.00	*99.70%*	₱ 3,840,000.00	*0.30%*	₱1,260,187,723.00		
Cost of Sales (A)	306,302,775.00	*96.90%*	9,796,279.00	*3.10%*	316,099,054.00	₱ 963,205.99	₱ 8,833,073.01
TOTAL	**₱306,302,775.00**		**₱ 9,796,279.00**		**₱316,099,054.00**	**₱ 963,205.99**	**₱ 8,833,073.01**
Ordinary Allowable Itemized Deductions (B)							
Communication, Light and Water	₱ 28,281,039.00	*98.45%*	₱ 445,324.00	*1.55%*	₱ 28,726,363.00	₱ 87,533.97	₱ 357,790.03
Insurance	17,194,441.00	*98.45%*	270,749.00	*1.55%*	17,465,190.00	53,219.32	217,529.68
Professional Fees	1,992,127.00	*98.45%*	31,369.00	*1.55%*	2,023,496.00	6,165.93	25,203.07
Rental	6,852,104.00	*98.45%*	107,896.00	*1.55%*	6,960,000.00	21,208.27	86,687.73
Repairs and Maintenance	17,490,021.00	*98.45%*	275,405.00	*1.55%*	17,765,426.00	54,134.19	221,270.81
Representation and Entertainment	8,117,709.00	*98.45%*	127,823.00	*1.55%*	8,245,532.00	25,125.50	102,697.50
Salaries and Allowances	60,427,530.00	*98.45%*	951,513.00	*1.55%*	61,379,043.00	187,032.08	764,480.92
Taxes and Licenses	36,372,329.00	*98.45%*	572,733.00	*1.55%*	36,945,062.00	112,577.70	460,155.30
Transportation and travels	2,511,972.00	*98.45%*	39,554.00	*1.55%*	2,551,526.00	7,774.92	31,779.08
Foreign Exchange Loss		*0.00%*	99,871,397.00	*100.00%*	99,871,397.00	304,324.63	99,567,072.37
Benefits paid	4,813,963.00	*98.39%*	78,953.00	*1.61%*	4,892,916.00	14,909.52	64,043.48
Realized Foreign Exchange Loss		*0.00%*	144,950,000.00	*100.00%*	144,950,000.00	441,686.58	144,508,313.42
Others	2,488,352.00	*98.45%*	39,182.00	*1.55%*	2,527,534.00	7,701.81	31,480.19
TOTAL	**₱ 186,541,587.00**		**₱ 247,761,898.00**		**₱ 434,303,485.00**	**₱ 1,323,394.41**	**₱ 246,438,503.59**

Petitioner submits that there is no legal or factual basis for the arbitrary reallocation of its COS and Itemized Deductions between its tax-exempt income and income subject to 30% regular corporate income tax (RCIT) as these adjustments on petitioner's taxable income were merely based on the assumed costs and itemized deductions of the petitioner, which were derived by using the ratio of petitioner's exempt sales (related to gaming operations) and taxable sales (related to rental income from parking area) in CY 2018. Petitioner further argues that there is no legal, factual and logical basis to hold petitioner liable for the 30% RCIT on the disallowed COS and Itemized Deductions in the amounts of ₱8,833,073.01 and ₱246,438,503.59 when its gross sales in CY 2018 was only ₱3,840,000.00. For petitioner, even assuming for the sake of argument that the disallowance was correct, such disallowance would only yield a maximum taxable income from regular activities in the amount of ₱3,840,000.00.

The disallowances are partially upheld.

As to the Itemized Deductions, the reallocation of the amounts is deemed unwarranted since most of the amounts of Itemized Deductions reported under Regular Income per ITR were already properly allocated based on the percentage sharing of its common cost, which was computed considering all generated income subject to regular income tax, as shown in petitioner's Breakdown of Cost and expenses for Exempted and Regular Activities.[93]

Certain items thereof, particularly, the Unrealized Foreign Exchange Loss, Benefits paid and Realized Foreign Exchange Loss, in the respective amounts of ₱99,871,397.00, ₱78,953.00 and ₱144,950,000.00 were, however, considered by petitioner as costs directly attributable to its regular

[93] BIR Records – Folder II (Exhibit "R-7-1"), p. 1050.

activity being allegedly related to loans and/or advances to related party. Since no documentary evidence was presented by petitioner to support the nature or source of the amounts for such deductions and its direct attributability to any activity cannot be ascertained, the same shall also be regarded as subject to allocation following petitioner's percentage sharing of common cost.

Consequently, the adjustment to Itemized Deductions, representing overclaimed deduction under Regular shall be worth ₱241,029,214.53 only, as computed below:

Itemized Deduction	Total Amount Reported per ITR[94]	% Sharing of Common Cost (for income subject to regular income tax)[95] *[rounded off %]*	Should be Amount allocated to Total Regular (a)	Amount reported under Total Regular per ITR[96] (b)	Adjustment to Itemized Deductions (c = b-a)
Foreign Exchange Loss	₱ 99,871,397.00	1.55%	₱ 1,548,232.07	₱ 99,871,397.00	₱ 98,323,164.93
Benefits paid	4,892,916.00	1.55%	75,851.24	78,953.00	3,101.76
Realized Foreign Exchange Loss	144,950,000.00	1.55%	2,247,052.16	144,950,000.00	142,702,947.84
Total	**₱ 249,714,313.00**		**₱ 3,871,135.47**	**₱ 244,900,350.00**	**₱ 241,029,214.53**

As regards the COS, it appears that the base amount of respondent's allocation is the total reported COS per ITR of ₱316,099,054.00, which may be broken down as follows:[97]

COS per ITR	Total Exempt	Total Regular	Total All Columns
Direct Charges-Materials, Supplies & Facilities	₱ 125,255,296.00		₱ 125,255,296.00
Direct Charges-Depreciation	181,047,479.00	₱ 9,796,279.00	190,843,758.00
Total COS	**₱ 306,302,775.00**	**₱ 9,796,279.00**	**₱ 316,099,054.00**

At the outset, no disallowance may be assessed by respondent from the amount of Direct Charges-Materials, Supplies & Facilities, since petitioner did not claim any amount therefrom as deduction from its sales under Regular.

Moreover, the total Direct Charges-Depreciation of ₱190,843,758.00 comprised of the Depreciation of Property and Equipment (PPE), in the amount of ₱75,104,463.00,[98] and Depreciation of Investment Properties, in the amount of ₱115,739,295.00.[99]

[94] Exhibit "P-9", Line 36 to 38, Schedule 5, column D, Docket – Vol. I, p. 192.
[95] BIR Records (Exhibit "R-7-1"), p. 1050; Total Income subject to RIT of ₱19,782,905.00 (total of ₱3,840,000.00, ₱11,806,365.00 and ₱4,136,540.00) divided by Total Income of ₱1,276,130,628.00.
[96] Exhibit "P-9", Line 36 to 38, Schedule 5, column C, Docket – Vol. I, p. 192.
[97] Exhibit "P-9", Schedule 3C, Docket – Vol. I, p. 190.
[98] Exhibit "P-9-1", Note 7 of *Notes to Financial Statements*, *Id.* at 606.
[99] Exhibit "P-9-1", Note 8 of *Notes to Financial Statements*, *Id.* at 607.

Based on the Breakdown of Cost and expenses for Exempted and Regular Activities,[100] the ₱9,796,279.00 reported Direct Charges-Depreciation under Total Regular per ITR was derived from the ₱115,739,295.00 Depreciation of Investment Properties, which was allocated using the percentage share of the Parking Area in the Depreciation computed on the basis of area in square meters (sqm). Since no amount was claimed by petitioner from the ₱75,104,463.00 Depreciation of PPE as deduction from gross sales under Total Regular, the base amount to be considered in determining any disallowance shall be limited to ₱115,739,295.00, from which petitioner claimed the reported deduction under Regular per ITR.

However, since there is no factual support to confirm the area (in sqm) that was used by petitioner in computing the percentage share of Regular Activities in the Depreciation of Investment Properties of ₱115,739,295.00, the said amount shall be allocated on the basis of petitioner's sales percentage, which would result in adjustment to COS in the amount of ₱9,443,602.26, as shown below:

Claimed Direct Charges-Depreciation under Total Regular per ITR		₱9,796,279.00
Less: Amount of Depreciation allocated to Regular on the basis of sales percentage		
Depreciation of Investment Properties for allocation	₱115,739,295.00	
Multiplied by % Share on depreciation based on sales (Sales under Regular of ₱3,840,000.00 divided by Total Sales of ₱1,260,187,723.00)	0.30%	352,676.74
Supposed Adjustment to COS		**₱9,443,602.26**

Nonetheless, inasmuch as respondent's assessed adjustment to COS amounted to only ₱8,833,073.01, the disallowance sustained shall be limited to the said amount of ₱8,833,073.01.

Further, to clarify, the adjusted disallowances to COS and Itemized Deductions in the respective amounts of ₱8,833,073.01 and ₱241,029,214.53, are not directly subject to the 30% RCIT but are deducted from the reported amounts of COS and Itemized Deductions that are allowed as deductions from Net Sales and Gross Income to arrive at the Net Taxable Income. Effectively, the reduction of allowed deduction resulted in the an increase in Net Taxable Income but since petitioner reported Net Loss during the subject CY 2018, the said adjustments of ₱8,833,073.01 and ₱241,029,214.53 shall first be added to petitioner's reported Net Loss of ₱237,775,272.00[101] to determine the Net Taxable Income subject to 30% RCIT.

[100] BIR Records – Folder II (Exhibit "R-7-1"), p. 1050.
[101] Exhibit "P-9", Line 10, Schedule 1, column C, Docket – Vol. I, p. 189.

c. Rent income subject to 30% RCIT – ₱286,385,466.30

Respondent's investigation disclosed that rent income from Philippine Amusement and Gaming Corporation (PAGCOR), which was reported as exempt covers both the Corporate Offices and Gaming Area. Since only the gaming area used for gaming activities are exempt from income tax, rent income pertaining to the Corporate Offices were subjected to 30% RCIT pursuant to Section 32 of the NIRC of 1997, as amended. Respondent further cited, as basis for denying petitioner's argument, the Supreme Court case of *Thunderbird Pilipinas Hotels and Resorts, Inc. vs Commissioner of Internal Revenue* (Thunderbird case)[102] where it held that *"3. [PAGCOR's] income from other related services is subject to corporate income tax only."*[103]

Petitioner argues that it cannot be imputed rental income for the use of the Corporate Offices because Section 6.1 of the Lease Agreement between petitioner and PAGCOR explicitly provides that the use of Corporate Offices shall be free of rent. In merely citing the *Thunderbird* case, respondent failed to address its argument. Since it is clear that it does not derive any rental income from PAGCOR's use of Corporate Offices, there is no basis for respondent to impose 30% RCIT on the presumed "rental income from the lease of Corporate Offices."

We agree with petitioner. Respondent's presumed allocated amount of rent income allegedly pertaining to PAGCOR's use of Corporate Offices cannot stand when the Lease Agreement itself does not provide for the charging of rental fees for the same.

Pertinently, Section 6.1 of the Agreement for Lease between petitioner and PAGCOR dated December 18, 2015,[104] as quoted below, states the rent provisions for the Gaming Premises only and that subject to the said rent payment, the continued use of the Office Premises by PAGCOR is not subject to any further charge or payment:

> 6.1. <u>Rent.</u> Subject to the provisions of Section 6.2, the Rent for the Gaming Premises for the New Term shall be <u>the higher of</u>:
>
> (a) One Hundred Thousand Pesos (PHP100,000) in respect of each calendar month or part thereof during the New Term; and
>
> (b) forty *percent* (40%) of the Net Gaming Revenues in that calendar month, or relevant part thereof.

[102] G.R. No. 211327, November 11, 2020.
[103] Exhibit "P-6", BIR Records – Folder II (Exhibit "R-7-1"), pp. 957 to 958.
[104] Exhibit "P-13", Docket – Vol. II, at p. 673.

> Subject to the payment of the Rent as herein provided, **PAGCOR shall continue to use the Office Premises for the New Term without any further charge or payment therefor.** *(Emphasis supplied)*

Clearly therefrom, the rental income by petitioner actually pertains to the rent of Gaming Premises only and their agreement allows the use of the Office Premises by PAGCOR without any charge or additional rental fees therefor. Since petitioner does not derive any rent income from PAGCOR's use of the Office Premises, respondent has no basis upon which to impute the 30% RCIT and apply the *Thunderbird* case.

Thus, the deficiency 30% RCIT in the amount of ₱286,385,466.30, assessed on rent income, shall be cancelled.

d. MCIT - ₱199,733.00; and
e. Income tax carried over to CY 2019 – ₱1,387,462.00

Per the FLD,[105] it is apparent that respondent deducted the MCIT of ₱199,733.00 and Income Tax Carried Over to 2019 of ₱1,387,462.00 from the total tax credits/payments, which may be applied against the income tax due of petitioner, to arrive at the basic deficiency income tax, effectively disallowing the said amounts without any explanation on the basis for such disallowance of such tax credits.

Under Section 228 of the NIRC of 1997, as amended, it is explicitly required that the taxpayer is informed, in writing, of the law and of the facts on which the assessment is made; otherwise, the assessment shall be void.[106] The requirement that the taxpayer must be informed of the factual and legal bases of the assessment is mandatory. It cannot be presumed.[107] To be sure, the requirement set by law to state in writing the factual and legal bases for the assessment is not a hollow exhortation. The law imposes a substantive, not merely a formal, requirement.[108]

Thus, pursuant to Section 228 of the NIRC of 1997, as amended, these items of assessments shall be void for failure of respondent to show and inform petitioner of the factual and legal bases upon which such assessments were made. uv

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105 Exhibit "P-6", BIR Records – Folder II (Exhibit R-7-1"), at pp. 957 and 961.
106 *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., et seq.,* G.R. Nos. 201398-99 and 201418-19, October 3, 2018.
107 *Commissioner of Internal Revenue vs. Spouses Remigio P. Magaan and Leticia L. Magaan*, G.R. No. 232663, May 3, 2021.
108 *Commissioner of Internal Revenue vs. Unioil Corporation*, G.R. No. 204405, August 4, 2021.

In sum, petitioner's basic deficiency income tax due for CY 2018 amounted to ₱2,038,909.66, computed as follows:

Taxable Income (Net Loss)		(₱237,775,272.00)
Add: Adjustments		
a. Adjustment to Cost of Services	₱ 8,833,073.01	
b. Adjustment to Itemized Deductions	241,029,214.53	249,862,287.54
Taxable Net Income		₱ 12,087,015.54
Tax Rate		30%
Income Tax Due		₱ 3,626,104.66
Less: Tax Credits/Payments		
Prior Year's Excess Credits	₱ 1,157,567.00	
Total Creditable Tax Withheld (BIR 2307)	429,628.00	1,587,195.00
Basic Deficiency Income Tax		**₱ 2,038,909.66**

II. Deficiency VAT

Petitioner was assessed for deficiency VAT for CY 2018 in the amount of ₱49,443,007.42, computed as follows:[109]

1. Gross Receipts per VAT Return	₱ 3,840,500.00
2. Add/Less: Aduit Adjustments	
a. Interest income on loan with HVPHI (Note 6 in AFS)	11,806,365.00
b. Proceeds from disposal of property and equipment (Cash Flow in AFS)	10,000.00
c. Vatable Rent income (Please see schedule A.1C)	286,385,466.30
3. Adjusted Gross Receipts per Investigations	₱ 302,042,331.30
Multiply by	12%
4. Output Tax	₱ 36,245,079.76
5. Less: Total Allowable Input Tax	22,027,549.25
6. VAT Due/(excess Input Tax)	₱ 14,217,530.51
7. Less: IT carried over to 2019	(21,566,689.25)
8. Basic Deficiency Value Added Tax/(Overpayment)	**₱ 35,784,219.76**
9. Add:	
a. Surcharge	
b. Interest @12% (04/26/2019 to 6/30/2022) 1161 days	13,658,787.66
TOTAL AMOUNT DUE/(OVERPAYMENT)	**₱ 49,443,007.42**

Thus, the following are the components of the VAT assessment, to wit:

a. Interest income on loan with Harbor View Properties and Holdings, Inc (HVPHI)	₱ 11,806,365.00
b. Proceeds from disposal of property and equipment	10,000.00
c. Vatable Rent income	286,385,466.30
d. Input tax carried over to 2019	21,566,689.25

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109 Exhibit "P-6", BIR Records – Folder II (Exhibit "R-7-1"), at p. 960.

a. *Interest income on loan with HVPHI – ₱11,806,365.00*

Respondent's investigation disclosed that the interest income earned on the loan with HVPHI amounting to ₱11,806,365.00 was not part of the exempt activities of petitioner and was, thus, subjected to VAT pursuant to Section 108 of the NIRC of 1997, as amended. It further cited CTA EB No. 1155 dated November 3, 2014, quoting that "When petitioner extended interest bearing loans to its affiliates, it provided financial assistance for a fee or remuneration or consideration, regardless of whether petitioner has realized profit or not. Such financial assistance is considered sale of service covered by VAT".[110]

Petitioner maintains that under Section 105 of the NIRC of 1997, as amended, a person is liable for VAT only when the sale of goods or services is made in the ordinary course of trade or business, including transactions incidental thereto; that a taxpayer may only be held liable for VAT on interest income if it's primarily engaged in the lending business as clarified in RMC No. 42-2003. Petitioner clarifies that it is engaged in real estate buying, developing, subdividing and selling and is not a lending investor, dealer in securities or financial institution and there is no basis for deficiency VAT assessment on its income from loan extended to HVPHI because the same was not made in the ordinary course, nor was it part of the transactions incidental to the course of its trade or business.

We find for petitioner.

It is settled and undisputed that petitioner is primarily engaged in the business of purchasing, acquiring, owning, developing, leasing, managing, operating, conveying and selling real properties (excluding land) and personal properties, as detailed in the latter's Amended Articles of Incorporation.[111]

Following RMC No. 42-2003,[112] as quoted hereunder, petitioner's interest income on the subject loan is not subject to VAT, it being not a lending investor, dealer in securities or financial institution:

> **Q-12: Is interest income on loan subject to VAT?**
> A-12: If the taxpayer qualifies as a lending investor, dealer in securities, financial institution as defined in Revenue Regulations No. 12-

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[110] Exhibit "P-6", BIR Records – Folder II (Exhibit R-7-1"), at p. 957.
[111] Exhibit "P-1", Docket – Vol. I, at p. 88.
[112] SUBJECT: Clarifying Certain Issues Raised Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS) by Direct Exporters.

> 2003, or another entity performing similar financing activities, interest income is subject to VAT.

However, Section 105 of the NIRC of 1997, as amended, provides that *"[a]ny person who, in the course of trade or business, sells, barters, leases goods or properties, renders services ... shall be subject to the value-added tax (VAT)"* and that the phrase *"in the course of trade or business"* includes *"transactions incidental thereto."* As such, even if petitioner is not a lending investor, dealer in securities or financial institution, its interest income may still be subject to VAT, if the same was derived from a transaction that is incidental to the course of its trade or business.

The VAT applies to the sale of services in the course of trade or business which includes transactions incidental thereto. It is imperative, however, that in order for a transaction to be considered incidental to the main line of business, there must be shown some intimate connection between the transaction in question and the main business activity which is subject to the VAT.[113]

In this case, respondent merely stated that, since the interest income earned on the loan with HVPHI is not part of the exempt activities, the same shall be subject to VAT under Section 108 of the NIRC of 1997, as amended, without actually explaining the basis thereof or establishing whether the subject transaction is incidental to petitioner's main course of trade or business, to warrant the imposition of VAT. Even the statement mentioned by respondent citing CTA EB No. 1155 does not in any way explain the relation or connection of the subject loan transaction to petitioner's main business of purchasing, acquiring, owning, developing, leasing, managing, operating, conveying and selling real properties (excluding land) and personal properties.

Absent a clear establishment or showing that the loan transaction in question is related or connected with the conduct of petitioner's main business activity, it makes no sense to consider it incidental to petitioner's main business activity that is subject to VAT. The assessed VAT on interest income earned on the loan with HVPHI amounting to ₱11,806,365.00 is, thus, unwarranted and must be deleted.

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[113] *Lapanday Foods Corporation vs. Commissioner of Internal Revenue*, G.R. No. 186155, January 17, 2023.

b. Proceeds from disposal of property and equipment – ₱10,000.00

Respondent's investigation disclosed that the proceeds from the disposal of property and equipment amounting to ₱10,000.00 was not part of the exempt activities of petitioner or the activities directly related to gaming of a PAGCOR Contractee, thus, was assessed of VAT pursuant to Section 108 of the NIRC of 1997, as amended.[114]

Petitioner submits that this refers to the sale of equipment that was previously used in the casino operations of PAGCOR and that any proceeds from disposal of such casino-related property and equipment are likewise exempt from VAT pursuant to Section 13(2)(b) of the PAGCOR Charter.

The assessment has merit.

Sections 13(2)(a) and (b), and 14(5) of Presidential Decree No. 1869 (PAGCOR Charter), as amended, states that:

> SECTION 13. *Exemptions.* –
>
> xxx xxx xxx
>
> (2) *Income and other taxes.* - (a) Franchise Holder: No tax of any kind or form, income or otherwise, as well as fees, charges or levies of whatever nature, whether National or Local, shall be assessed and collected under this Franchise from the Corporation; nor shall any form of tax or charge attach in any way to the earnings of the Corporation, except a Franchise Tax of five (5%) percent of the gross revenue or earnings derived by the Corporation from its operation under this Franchise. Such tax shall be due and payable quarterly to the National Government and shall be in lieu of all kinds of taxes, levies, fees or assessments of any kind, nature or description, levied, established or collected by any municipal, provincial, or national government authority.
>
> (b) Others: The exemption herein granted for earnings derived from the operations conducted under the franchise, specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies, shall inure to the benefit of and extend to corporation(s), association(s), agency(ies), or individual(s) with whom the Corporation or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise xxx.
>
> xxx xxx xxx
>
> SECTION 14. *Other Conditions.* –
>
> xxx xxx xxx

[114] Exhibit "P-6", BIR Records – Folder II (Exhibit R-7-1"), at pp. 950 to 951.

> (5) *Operation of related services.* – The Corporation is authorized to operate such necessary and related services, shows and entertainment. Any income that may be realized from these related services shall not be included as part of the income of the Corporation for the purpose of applying the franchise tax, but the same shall be considered as a separate income of the Corporation and shall be subject to income tax.

Indeed, the PAGCOR Charter provides for the exemption of PAGCOR from the payment of income and other taxes, including VAT, on earnings from its operations under its franchise, which inures and extends to the benefit of its contractees and licensees, but only in connection with the casino operations conducted under its franchise, and that any earnings derived from other related services or activities are considered separate income subject to tax.

Consequently, petitioner, being a contractee of PAGCOR, by virtue of the Agreement for Lease[115] between them, is exempt from any taxes only on its earnings derived in connection with PAGCOR's casino/gaming operations, and its revenues derived from other related activities or services or from non-gaming operations is subject to VAT.

The proceeds from the sale of petitioner's equipment, albeit previously used in the gaming operations, do not enjoy the benefit of VAT exemption since the same do not pertain to earnings derived from PAGCOR's gaming operations. Such proceeds are considered as other income from petitioner's sale of property and equipment, which is a transaction deemed incidental to its main business of purchasing, leasing and selling real properties (excluding land) and personal properties, and is therefore subject to VAT.

Thus, the assessed proceeds from the disposal of property and equipment amounting to ₱10,000.00 is sustained.

c. *Vatable Rent income – ₱286,385,466.30*

The assessed rent income of ₱286,385,466.30, subject to VAT, is based on the same finding under the deficiency income tax that the rent income from PAGCOR presumably covers a portion pertaining to the use of Corporate Offices, which are allegedly not part of the exempt activities of petitioner.[116]

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[115] Exhibit "P-13", Docket – Vol. II, pp. 659 to 693.
[116] Exhibit "P-6", BIR Records – Folder II (Exhibit R-7-1"), at pp. 950 to 951.

As earlier discussed, the Lease Agreement between petitioner and PAGCOR provides no charge or further payment for PAGCOR's use of the Office Premises. As such, there is no actual or constructive receipt of rent income arising from PAGCOR's use of the Office Premises that may be subject to VAT. Hence, the assessed VATable rent income of ₱286,385,466.30 shall also be cancelled.

d. Input tax carried over to 2019 – ₱21,566,689.25

As gleaned from the FLD,[117] respondent deducted from the computed VAT Due the amount of ₱21,566,689.25, which pertained to input tax carried over to 2019, thereby, effectively disallowing the said amount from the total allowable input tax and resulting to a higher basic deficiency VAT due.

However, neither the FLD nor the Details of Discrepancies show the legal and factual bases for such deduction or disallowance. Consequently, the said disallowance of input tax carried over to 2019 in the amount of ₱21,566,689.25 shall be void for failure of respondent to inform petitioner of the law and facts on which such disallowance was made, pursuant to Section 228 of the NIRC of 1997, as amended.

Considering the foregoing, petitioner is not liable for basic deficiency VAT for CY 2018 since its input tax credits are more than enough to cover the resulting output tax due for the same period, as computed below:

Gross Receipts per VAT Return	₱ 3,840,500.00
Add: Adjustments	
Proceeds from disposal of property and equipment	10,000.00
Adjusted Gross Receipts per Investigations	₱ 3,850,500.00
Multiply by	12%
Output Tax	₱ 462,060.00
Less: Total Allowable Input Tax	22,027,549.25
(Excess Input Tax Credit)	**(₱ 21,565,489.25)**

III. Deficiency WTC

Petitioner was assessed deficiency WTC for CY 2018 in the amount of ₱1,777,453.43, computed as follows:[118]

[117] Exhibit "P-6", BIR Records – Folder II (Exhibit "R-7-1"), at p. 960.
[118] *Ibid.*

Per Alphalist:			**Tax Required**
Schedule 7.1	14,591,906.19		3,629,835.85
Schedule 7.3	38,169,420.23		10,758,878.73
Schedule 7.4	6,102,164.22	₱58,863,490.64	1,489,253.06
Per AFS (Note 14):			
Salaries and wages	57,636,472.00		
Retirement expense	2,071,242.00		
Other employee benefits	3,742,571.00	₱63,450,285.00	
Discrepancy		**4,586,794.36**	1,256,235.39
Tax Required To Be Withheld per Investigation			₱ 17,134,203.03
Less: Tax Paid Per Return (BIR 1601-C)			15,877,967.60
Basic Withholding Tax - Compensation			**₱ 1,256,235.43**
Add: Interest @12% (1/15/2019 to 6/30/2022) 1262 days			521,218.00
TOTAL AMOUNT DUE			**₱ 1,777,453.43**

The foregoing assessment is pursuant to Section 252 of the NIRC of 1997, as amended, and is based on the discrepancies between the amount of salaries and payroll - related expenses subject to withholding tax – compensation per Audited Financial Statement (AFS) against balances declared in the Summary of Monthly Remittance of Income Taxes Withheld on Compensation (BIR Form No. 1601-C). The tax consequence of ₱1,256,235.39 on the discrepancy of ₱4,586,794.36 was computed as follows:[119]

Discrepancy	₱ 4,586,794.36
Multiply by: Effective Rate	
Tax Required / Taxable Income (15,877,967.64 / 57,973,985.37)	27.39%
Tax Consequence	**₱ 1,256,235.39**

The assessment lacks merit.

The subject assessment was premised on Section 252 of the NIRC of 1997, as amended, which provides as follows:

> SEC. 252. *Failure of a Withholding Agent to Refund Excess Withholding Tax.* - Any employer/withholding agent who fails or refuses to refund excess withholding tax shall, in addition to the penalties provided in this Title, be liable to a penalty equal to the total amount of refunds which was not refunded to the employee resulting from any excess of the amount withheld over the tax actually due on their return.

Respondent's reliance on Section 252 of the NIRC of 1997, as amended, as legal basis for imputing the subject basic deficiency WTC is misplaced. Clearly, the above provision talks about the penalty to

[119] Exhibit "P-6", BIR Records – Folder II (Exhibit "R-7-1"), at pp. 955 to 956.

withholding agents who fail or refuse to refund excess withholding tax, in cases when there is any excess amount withheld from an employee over the tax actually due on the return. There is nothing in the said provision that would justify respondent's finding of subjecting certain amounts in petitioner's AFS to WTC. In fact, the assessment made is in conflicting situations with the above provision as the subject assessment gives rise to additional withholding tax due while the above provision deals with refund of excess tax withheld.

Moreover, the assessment is also deemed lacking in factual basis. It is apparent in respondent's computation (Schedule A.3)[120] that the total amount per Alphalist of ₱58,863,490.64 used in the comparison included items of non-taxable compensation and yet respondent merely picked up the amounts of certain accounts in petitioner's AFS, compared it with the said amount per Alphalist and treated the entire difference as outright subject to WTC, without examining and identifying the details and nature of such accounts and amounts of compensation, to determine whether the same were actually subject to WTC.

Thus, for lack of factual and legal bases, the assessed deficiency WTC in the amount of ₱1,777,453.43 is cancelled for being devoid of merit.

IV. Deficiency EWT

Respondent assessed petitioner for deficiency EWT for CY 2018 in the amount of ₱1,318,456.73 based on the discrepancies between expenses declared per Books against balances declared in the EWT Returns (BIR Form No. 1601-E) and pursuant to Section 57(B) of the Tax Code of 1997, as implemented by Section 2.57.2 of RR 2-98, as amended, computed as follows:[121]

Income Payments/ATC	Per Investigation	Per BIR 1601-E	Discrepancy	Rate	WE
Purchase of Goods	₱107,461,001.04	₱ 38,555,894.80	₱68,905,106.24	1%	₱ 689,051.06
Purchase of Service	217,372,471.94	250,992,384.26	(33,619,912.32)	2%	(672,398.25)
Rent	12,922,064.26	25,278,500.06	(12,356,435.80)	5%	(617,821.79)
Professional Fees @15%	1,730,461.22	4,549,307.80	(2,818,846.58)	15%	(422,826.99)
Total	₱339,485,998.46	₱319,376,086.92	₱20,109,911.54		₱(1,023,995.96)
Basic Expanded Withholding Tax					**₱ 689,051.06**
Add:					
Interest 12% (01/11/2019 to 6/30/2022) 1266 days					286,796.27
Interest @20% on Negative Balances					342,609.40
TOTAL DEFICIENCY WE					**₱ 1,318,456.73**

[120] Exhibit "P-6", BIR Records – Folder II (Exhibit "R-7-1"), at p. 947.
[121] Exhibit "P-6", BIR Records – Folder II (Exhibit "R-7-1"), at p. 955.

The Court cancels the assessment.

As already earlier intimated, Section 228 of the NIRC of 1997, as amended, unequivocally requires that the taxpayer shall be informed in writing of the specific law and facts on which the assessment is made; otherwise, the assessment shall be void. This requirement is consistent with the constitutional guarantee of due process under the 1987 Philippine Constitution, which states that "[N]o person shall be deprived of life, liberty, or property without due process of law." This due process requirement is mandatory and goes into the very validity of the assessment itself.

A perusal of respondent's computation shows that respondent merely lifted certain accounts reflected in petitioner's AFS and books, classified them into groups (purchase of goods, purchase of service, rent, professional fees) and subjected these accounts to different EWT rates, without specifying the particular transactions covered, the reasons why such transactions were deemed subject to withholding tax and the applicable provision or subsection under Section 2.57.2 of RR No. 2-98 that would justify the same.

On this note, the Court finds as instructive the ruling in *Ortiz Memorial Chapel Inc., represented by Ronald Ortiz vs. Commissioner of Internal Revenue*,[122] where the Supreme Court held that the BIR's general reference to Section 32 of the NIRC of 1997, as amended, failed to satisfy the statutory and constitutional requirements of due process in tax assessments, thus:

> Likewise, the BIR's reliance on Section 32 of the NIRC is equally unavailing. Section 32 is a comprehensive provision defining 'gross income' and listing a broad range of taxable and exempt items. Under paragraph (A), gross income 'means all income derived from whatever source,' and includes eleven categories such as compensation, business income, gains from property dealings, interests, rents, royalties, dividends, annuities, and others. Paragraph (B), on the other hand, enumerates exclusions from gross income, such as life insurance proceeds, gifts, compensation for injuries, retirement benefits, and treaty-exempt income, among others. The sheer breadth of this provision underscores that it provides general definitions and classifications; it does not, by itself, specify what constitutes undeclared income in a particular case.
>
> **Without any indication of which specific subsection of Section 32 was invoked or how it was applied to OMCI's transactions, the citation of this provision is too general to inform the taxpayer of the legal bases of the assessment. A taxpayer confronted with such a vague reference cannot reasonably discern the nature of the supposed violation or determine how to effectively respond. The right to protest presupposes knowledge of what is being contested. Without such**

[122] G.R. No. 278483, December 3, 2025.

> **clarity, the taxpayer is deprived of a meaningful opportunity to be heard – an outcome the Constitution itself forbids.** *(Emphasis added)*

Similarly, in the present case, respondent merely stated his reliance on Section 2.57.2 of RR No. 2-98 as basis for the deficiency EWT assessment, without identifying the specific subsection thereof applicable to the alleged assessed accounts. Although respondent also made mention of Section 57(B)[123] of the NIRC of 1997, as amended, the same also provides only for the general requirement for the withholding of tax on items of income payments at the rates of one percent to 32%.

It is worth emphasizing that Section 2.57.2 of RR No. 2-98 consists of several subsections imposing varying EWT rates for specific classes of payees on different categories of income payments. Despite these several classes of payees or distinctions of income payments that may be subject to various EWT rates under different bases, respondent's assessment yet failed to identify the specific transactions involved, the nature of such transactions, the identities of the payees, the relevant factual details for the imposition of EWT, and the precise provision or subsection of Section 2.57.2 of RR No. 2-98 allegedly applicable to such income payment transactions.

Absent any indication of which specific subsection of Section 2.57.2 of RR No. 2-98 was invoked or how it was applied to the alleged accounts, the citation of this provision is too general to inform petitioner of the legal bases of the assessment. Respondent's general reference to Section 2.57.2 of RR No. 2-98 failed to meet the statutory and constitutional requirements of due process in tax assessment.

Hence, the assessment merely identified the certain expense categories and imposed alleged corresponding EWT rates without sufficiently stating the factual and legal bases therefor. Such generalized findings deprived petitioner of a meaningful opportunity to verify the transactions involved, ascertain the applicable withholding tax rules, and prepare an informed protest with proper substantiation therefor.

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[123] SEC. 57. *Withholding of Tax at Source.* –

xxx xxx xxx

(B) *Withholding of Creditable Tax at Source.* – The Secretary of Finance may, upon the recommendation of the Commissioner, require the withholding of a tax on the items of income payable to natural or juridical persons, residing in the Philippines, by payor-corporation/persons as provided for by law, at the rate of not less than one percent (1%) but not more than thirty-two percent (32%) thereof, which shall be credited against the income tax liability of the taxpayer for the taxable year: *Provided,* That, beginning January 1, 2019, the rate of withholding shall not be less than one percent (1%) but not more than fifteen percent (15%) of the income payment.

Accordingly, the deficiency EWT assessment in the amount of ₱1,318,456.73 shall be void for falling short of compliance with the due process requirements under Section 228 of the NIRC of 1997, as amended.

V. Deficiency DST

Respondent's investigation disclosed that some transactions were not subjected to its corresponding DST; hence, these transactions were subjected to the applicable DST rates pursuant to Sections 179 and 194 of the NIRC of 1997, as amended. The deficiency DST for CY 2018 in the amount of ₱76,090,791.04 was computed as follows:[124]

Details	Amount	Rate	Legal Basis	DST
a. Amount owed by New Coast Hotel Inc. (NCHI) (Note 11 in AFS)	₱2,500,834,788.00	₱1.5/200	Sec. 179	₱ 18,756,261.00
b. Amount owed to New coast Hotel Inc. (NCHI) (Note 11 in AFS)	530,522,162.00	₱1.5/200	Sec. 179	3,978,917.00
c. Amount owed by CTF Properties (Philippines), Inc. (CTFPPI) (Note 11 in AFS)	3,931,369,593.00	₱1.5/200	Sec. 179	29,485,272.00
d. Amount owed to Max Profit International Limited (Max Profit) (Note 11 in AFS)	68,856,618.00	₱1.5/200	Sec. 179	516,425.00
e. Amount owed by Flexi-Deliver Holding Limited (Note 11 in AFS)	42,953,513.00	₱1.5/200	Sec. 179	322,152.00
f. Lease Income of Parking Areas with NCHI (Note 17b in AFS)	3,840,000.00	1st ₱2000=₱6 + ₱2/₱1000	Sec. 194	7,676.00
g. Rental expense on HVPHI's land (Note 17c in AFS)	6,960,000.00	1st ₱2000=₱6 + ₱2/₱1000	Sec. 194	13,916.00
h. Rent income subject to 30% RCIT (Schedule A.1 c)	286,385,466.30	1st ₱2000=₱6 + ₱2/₱1000	Sec. 194	572,767.00
Total				₱ 53,653,386.00
Less: DST Paid per Return				-
Basic Documentary Stamp Tax per Investigation				**₱ 53,653,386.00**
Add: Interest @12% (01/05/2019 to 6/30/2022) 1272 days				22,437,405.04
TOTAL AMOUNT DUE				**₱ 76,090,791.04**

Petitioner submits that the deficiency DST assessment should be cancelled for lack of basis as no loans or advances were made between the petitioner and its related parties in CY 2018; and that the lease agreements were signed and executed in 2004, 2003 and 2015, respectively, hence, respondent has no authority to assess DST on these lease agreements, if any, because the LOA in this case only covers petitioner's internal revenue tax liabilities for CY 2018.

The assessment is factually flawed.

[124] Exhibit "P-6", BIR Records – Folder II (Exhibit "R-7-1"), at p. 954.

As can be gleaned from Note 11 – Related Party Disclosures of the Notes to Financial Statements,[125] the amounts subject of the assessment of ₱2,500,834,788.00, ₱530,522,162.00, ₱3,931,369,593.00, ₱68,856,618.00 and ₱42,953,513.00, represent the year-end balances of the respective accounts "Amounts owed by/to related party" for New Coast Hotel, Inc. (NCHI), CTF Properties (Philippines), Inc. (CTFPPI), Max Profit International Limited (Max Profit) and Flexi-Deliver Holding Limited (Flexi-Deliver). It is also noted that the accounts "Amounts owed by/to related party" for NCHI, CTFPPI, Max Profit and Flexi-Deliver had respective corresponding balances of ₱2,704,392,272.00, ₱528,429,391.00, ₱3,745,769,593.00, ₱1,730,236,680.00 and ₱40,788,682.00 at the beginning of 2018.[126] As such, the assessed amounts or portions thereof may pertain to prior year(s) transactions made by petitioner to related parties.

It is apparent, however, that respondent merely pickedup the figures indicated beside Year 2018 from petitioner's Notes to Financial Statements and imputed DST thereon without actually determining if such amounts represent new transactions entered into by petitioner during CY 2018 that may be subject to DST. Respondent also did not specify any instructional letters, memos, voucher or other documents evidencing alleged advances or loan transactions. Such outright treatment of the ending balance as advance or loan transactions subject to DST without proper determination of actual transactions involving advances or loans to related parties during the subject period is amiss.

It is well to remember that assessments should not be based on mere presumptions no matter how reasonable or logical said presumptions may be. In order to stand the test of judicial scrutiny, the assessment must be based on actual facts.[127]

As to the Lease Income of Parking Areas with NCHI and Rental expense on HVPHI's land, the Court agrees with petitioner. The Supplement to the Lease Agreement and notarized Lease Agreement between petitioner and NCHI[128] were executed on June 30, 2004 and February 6, 2003, respectively, while the Supplement No. 4 to the Lease Agreement between petitioner and HVPHI[129] was executed on September 1, 2015. It is evident that the lease agreements with NCHI and HVPHI were executed and signed prior to the subject period of the assessment, which is CY 2018. Consequently, the DST imposed on the lease agreements

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[125] Exhibit "P-9-1", Docket – Vol. II, at p. 608.
[126] *Ibid.*
[127] *Ortiz Memorial Chapel, Inc., represented by Ronald Ortiz vs. Commissioner of Internal Revenue* G.R. No. 278483, December 3, 2025.
[128] Exhibit "P-14", Docket – Vol. II, pp. 694 to 701 and Docket – Vol. I, pp. 330 to 337.
[129] Exhibit "P-15", *Id.* at 702 to 705.

amounting to ₱7,676.00 and ₱13,916.00 cannot prosper since said agreements are outside the scope of the authorized assessment audit.

With regard to the Rent income subject to 30% RCIT in the amount of ₱572,767.00, this was based on the same finding under the deficiency income tax. Following the earlier discussion, petitioner does not derive any rent income from PAGCOR's use of Office Premises as the Lease Agreement do not provide additional fee or charge for the same. Besides, the purportedly assessed Lease Agreement is the Agreement for Lease with PAGCOR[130] pertaining to the Gaming Premises, which is exempt from DST pursuant to PAGCOR's Charter and outside the scope of the subject period of executed on December 18, 2015.

Considering the foregoing, the assessed deficiency DST in the amount of ₱76,090,791.04 must be struck down.

VI. Deficiency IAET

Petitioner was assessed for deficiency IAET for CY 2018 in the amount of ₱413,947,038.72, computed as follows:[131]

1. Taxable income per ITR	-₱ 237,775,272.00
2. Add/Less: Audit Adjustments	
Income exempt from tax	763,503,361.00
3. Total	₱ 525,728,089.00
4. Add: Retained earnings-prior years (NET OF APPROPRIATION)	4,683,514,156.00
5. Accumulated Earnings as of Taxable year	₱ 5,209,242,245.00
6. Less: Amount that may be retained for operation (Capital Stock)	2,722,930,653.00
7. Taxable Improperly accumulated Earnings	₱ 2,486,311,592.00
Rate of Tax	10%
8. Deficiency on Basic Improperly Accumulated Earnings Tax	**₱ 248,631,159.20**
9. Add:	
a. Surcharge	62,157,789.80
b. Interest of 12% (01/15/2019 to 6/30/2022) 1262 days	103,158,089.72
10. Total Amount Due/(Overpayment)	**₱ 413,947,038.72**

Petitioner avers that the earnings used by respondent in computing its alleged improperly accumulated earnings for CY 2018 have no factual basis because they cannot be traced to its AFS. Petitioner invokes BIR Ruling No. DA (C-258) 659-200, which provides that petitioner qualifies as a publicly-held corporation because 51% of its outstanding capital stock is ultimately and proportionately owned by the stockholders of International Entertainment Corporation (IEC), a company whose shares of stock are listed in the Hongkong Stock Exchange. Thus, being a publicly-held

[130] Exhibit "P-13", Docket – Vol. II, pp. 659 to 693.
[131] Exhibit "P-6", BIR Records – Folder II (Exhibit "R-7-1"), at p. 954.

corporation, it is not subject to IAET pursuant to Section 29(B)(2) of the NIRC of 1997, as amended.

Contrary to petitioner's assertion, the figures used in respondent's assessment can be gleaned from its AFS and Annual ITR. The Taxable income per ITR and Income exempt from tax, in the respective amounts of ₱237,775,272.00 and ₱763,503,361.00 were reported in petitioner's Annual ITR[132] while the Retained earnings-prior years and Amount that may be retained for operation, in the respective amounts of ₱4,683,514,156.00 and ₱2,722,930,653.00, were reflected in petitioner's Statement of Financial Position.[133]

Moreover, while petitioner claims to be a publicly-held corporation exempt from IAET, the submitted evidence on record shows otherwise. Furthermore, its reliance on BIR Ruling No. DA (C-258) 659-2009[134] cannot stand since the facts represented in the said ruling years ago differ from the factual circumstances present in this case.

Verily, Section 29(B)(2) of the NIRC of 1997, as implemented by Section 4 of RR No. 2-2001,[135] as quoted hereunder, provides for a list of corporations exempt from IAET, which includes publicly-held corporations, and the determination of whether a corporation is closely-held or publicly-held for purposes of imposing the IAET:

> **SEC. 4. Coverage**. The 10% Improperly Accumulated Earnings tax (IAET) is imposed on improperly accumulated taxable income earned starting January 1, 1998 by domestic corporations as defined under the Tax Code and which are classified as closely-held corporations. Provided, however, that Improperly Accumulated Earnings Tax shall not apply to the following corporations:
>
> xxx xxx xxx
> c. Publicly-held corporations;
> xxx xxx xxx
>
> For purposes of these Regulations, **closely-held corporations are those corporations at least fifty percent (50%) in value of the outstanding capital stock or at least fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote is owned directly or indirectly by or for not more than twenty (20) individuals**. Domestic corporations not falling under the aforesaid definition are, therefore, publicly-held corporations.

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[132] Exhibit "P-9", Line 10, Schedule 1, Docket – Vol. I, at p. 189.
[133] Exhibit "P-9-1", Equity, Docket – Vol. II, at p. 574.
[134] Exhibit "P-16", Docket – Vol. II, pp. 706 to 708.
[135] SUBJECT: Implementing the Provision on Improperly Accumulated Earnings Tax Under Section 29 of the Tax Code of 1997.

For purpose of determining whether the corporation is closely held corporation, insofar as such determination is based on stock ownership, the following rules shall be applied:

1. Stock Not Owned by Individuals – **Stock owned directly or indirectly by or for a corporation, partnership, estate or trust shall be considered as being owned proportionately by its shareholders, partners or beneficiaries**. *(Emphases added)*

Per BIR Ruling No. DA (C-258) 659-2009 dated November 10, 2009,[136] the BIR confirmed that petitioner is a publicly-held corporation and is therefore exempt from the IAET under Section 29 of the NIRC of 1997, as amended, and in reference to RR No. 2-2001. It is also worthy to consider that the said ruling was issued by the BIR on the basis of the facts as represented during 2009, or the time of the request, for such confirmation. Portions of the said ruling read as follows:

MSPI is a wholly-owned subsidiary of CTF Properties (Philippines), Inc. ("CTFPPI"), a domestic corporation organized under the laws of the Republic of the Philippines. CTFPPI, in turn, is wholly-owned by Flexi-Deliver Holding Ltd. ("Flexi-Deliver"), a corporation created under the laws of the British Virgin Islands ("BVI"). One hundred percent (100%) of the capital stock of Flexi-Deliver is owned by Maxiprofit International Limited ("Maxiprofit"), a corporation incorporated under the laws of the BVI. On the other hand, fifty-one percent (51%) of the capital stock of Maxiprofit is owned by Fortune Gate Overseas Limited ("Fortune Gate"), a BVI-company.

Fortune Gate is wholly-owned by International Entertainment Corporation ("IEC"), a publicly listed company incorporated in the Cayman Islands whose shares have been listed on the Growth Enterprise Market of The Stock Exchange of Hong Kong Limited since July 31, 2000. As of August 18, 2009, IEC has more than 159 stockholders.

xxx xxx xxx

Thus, in BIR Ruling No. 025-2002 dated June 25, 2002 and later reiterated in BIR Ruling No. DA 085-03 dated March 20, 2003, this Office ruled that such shares will be considered as being owned proportionately by the shareholders. The ownership of a domestic corporation for purposes of determining whether it is closely-held corporation or a publicly-held corporation is ultimately traced to the individual shareholders of the parent company. Accordingly, where at least 50% of the outstanding capital or at least 50% of the total combined voting power of all classes of stock entitled to vote in a corporation is owned directly or indirectly by at least 21 or more individuals, the corporation is considered publicly-held corporation as the term is defined in Revenue Regulations No. 2-2001.

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[136] Exhibit "P-16", Docket – Vol. II, pp. 706 to 708.

> Such being the case, MSPI is a publicly-held corporation since 51% of its outstanding capital stock is ultimately and proportionately owned by the stockholder of IEC, a publicly listed company in Hong Kong. As mentioned above, the shares of stock of IEC are held by more than 159 stockholders.
>
> In view of the foregoing, this Office holds that 50% of the issued and outstanding capital stock of MSPI, comprising the 51% shares indirectly owned by stockholders of IEC, is owned by more than 20 individuals. Hence, MSPI cannot be considered a closely-held corporation but rather a publicly-held corporation and therefore, is exempt from the imposition of IAET under Section 29 (B) (2) (a) of the Tax Code of 1997, as amended.
>
> This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be disclosed that the facts are different, then this ruling shall be considered null and void.

In the present case, for CY 2018, petitioner is still a wholly-owned subsidiary of CTFPPI, which is wholly-owned by Flexi-Deliver, a corporation incorporated in the British Virgin Islands as disclosed in petitioner's Note 1[137] of its Notes to Financial Statements. This is also supported by petitioner's Amended General Information Sheet (GIS) for the year 2018[138] showing that CTFPPI has a total subscribed common shares of 2,722,930,648, which is equivalent to 100% ownership.

A perusal of the International Entertainment Corporation (IEC) 2018/2019 Annual Report[139] reveals that petitioner, CTFPPI, Flexi-Deliver and Maxprofit are all subsidiaries of IEC, who has 100% indirect ownership with the said corporations. Noticeably, IEC now held 100% of the issued share capital of petitioner as compared to the 51% in 2009 per the above BIR Ruling. It is further noted in the same 2018/2019 IEC Annual Report[140] that IEC's executive director, Dr. Choi Chiu Fai Stanley (Dr. Choi), wholly-owned Head and Shoulders Direct Investment Limited (Head and Shoulders), which in turn wholly-owned Brighten Path Limited, which holds approximately 55.82% of IEC's issued share capital, to wit:[141]

> Dr. Choi is the sole shareholder and the sole director of Head and Shoulders Direct Investment Limited, a company incorporated in the British Virgin Islands with limited liability, which in turn is the sole

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[137] Exhibit "P-9-1", Corporate Information, Docket - Vol. II, at p. 579.

[138] Exhibit "P-45", page 5 of 9, USB (submitted on March 22, 2024). The ICPA USB was offered as Exhibit "P-20-2" but was not marked, refer to Resolution dated March 26, 2025, Docket – Vol. II, at p. 747.

[139] Exhibit "P-46", *Notes to the Consolidated Financial Statements*, Particulars of Subsidiaries, page 195 of 222, USB (submitted on March 22, 2024).

[140] Exhibit "P-46", *Report of the Directors*, Interests and Short Positions of Directors and Chief Executives in Shares, Underlying Shares and Debentures of the Company and its Associated Corporations, page 29 of 222 to page 30 of 222, USB (submitted on March 22, 2024).

[141] Exhibit "P-46", *Board of Directors and Senior Management*, Executive Directors, last paragraph, page 22 of 222, USB (submitted on March 22, 2024).

> shareholder of Brighten Path Limited, the controlling Shareholder (as defined in the Listing Rules). Dr. Choi is deemed, by virtue of his interest in Brighten Path Limited, to be interested in 764,223,268 shares of the Company (the 'Shares') under the Securities and Futures Ordinance (Chapter 571 of the Laws of Hong Kong), representing approximately 55.82% of the issued share capital of the Company.

Thus, for CY 2018, Dr. Choi indirectly owns more than 50% of the issued share capital of IEC and since petitioner is wholly-owned by IEC, then more than 50% of petitioner's issued share capital is likewise ultimately and proportionately owned by Dr. Choi. It is also an evident disparity from the BIR Ruling since in the said ruling, 50% of the issued capital stock of petitioner, which is indirectly owned by stockholders of IEC, is owned by more than 20 individuals.

Considering the foregoing, the ownership of petitioner for purposes of determining whether it is closely-held or publicly-held corporation is ultimately traced to the individual shareholders of its parent company. Accordingly, since 55.82% of the issued share capital of petitioner is owned indirectly by only one individual, who is a stockholder of IEC, petitioner falls within the purview of a closely-held corporation under RR No. 2-2001 and is therefore not exempt from the imposition of IAET under Section 29(B)(2) of the NIRC of 1997, as amended.

Thus, the assessed basic deficiency IAET in the amount of ₱248,631,159.20 is hereby upheld.

VII. Compromise Penalty

The assessed compromise penalties of ₱270,000.00, broken down below, for petitioner's alleged failure to file and/or pay the internal revenue taxes for CY 2018 at the times required by law or regulation must be cancelled absent a showing that petitioner consented to the same:[142]

Income tax	₱ 50,000.00
VAT	50,000.00
WC	40,000.00
WE	30,000.00
DST	50,000.00
IAET	50,000.00
Total	**₱270,000.00**

It must be stressed that a compromise penalty is imposed to avoid prosecution for violation of the provisions of the NIRC of 1997, as

[142] Exhibit "P-6", BIR Records – Folder II (Exhibit "R-7-1"), at pp. 951 to 952.

amended.[143] Pursuant to Revenue Memorandum Order No. 7-2015,[144] compromise penalties are only amounts suggested in settlement of criminal liability, and may not be imposed or exacted on the taxpayer in the event that a taxpayer refuses to pay the same. It is well-settled that this Court has no jurisdiction to compel a taxpayer to pay the compromise penalty because by its very nature, it implies a mutual agreement between the parties in respect to the thing or subject matter that is so compromised, and the choice of paying or not paying it distinctly belongs to the taxpayer.[145] The imposition of the same without the conformity of the taxpayer is illegal and unauthorized.[146]

ACCORDINGLY, the present **Petition for Review** is **PARTIALLY GRANTED.**

In view thereof, the assessments issued by respondent against petitioner covering deficiency VAT, WTC, EWT, DST and compromise penalties for CY 2018 are **CANCELLED** and **SET ASIDE**. The assessments issued against petitioner covering deficiency income tax and IAET for CY 2018 are, however, **UPHELD IN PART**.

Petitioner is, thus, **ORDERED TO PAY** respondent the aggregate amount of **₱387,445,559.32**, inclusive of the 25% surcharge, 12% deficiency interest imposed under Sections 248(A)(3) and 249(B) of the NIRC of 1997, as amended, computed as follows:

	Income Tax	**IAET**	**Total**
Basic Deficiency Tax Due	₱ 2,038,909.66	₱ 248,631,159.20	₱ 250,670,068.86
Add: 25% Surcharge	509,727.42	62,157,789.80	62,667,517.22
12% Deficiency Interest			
: From April 16, 2019 to June 30, 2022 *[₱2,038,909.66 x 12% x 1,172/365 days]*	785,622.62		785,622.62
ET: From January 16, 2020 to June 30, 2022 *[₱248,631,159.20 x 12% x 897/365 days]*		73,322,350.62	73,322,350.62
Total Amount Due, June 30, 2022[147]	**₱ 3,334,259.70**	**₱ 384,111,299.62**	**₱ 387,445,559.32**

In addition, petitioner is **ORDERED TO PAY** respondent delinquency interest at the rate of 12% per annum on the total unpaid deficiency taxes due as of June 30, 2022, in the amount of ₱387,445,559.32,

[143] *The Philippines International Fair, Inc. vs. The Collector of Internal Revenue et. al.*, G.R. Nos. L-12928 and L-12932, March 31, 1962.

[144] SUBJECT: The Revised Consolidated Schedule of Compromise Penalties for Violations of the National Internal Revenue Code.

[145] *The Philippines International Fair, Inc. vs. The Collector of Internal Revenue et. al.*, supra.

[146] *Commissioner of Internal Revenue vs. Lianga Bay Logging Co., Inc.* et al., G.R. No. L-35266, January 21, 1991.

[147] Due date for payment as indicated in the FANs, BIR Records – Folder II (Exhibit "R-7-1"), pp. 937 and 942.

or equivalent to ₱127,379.36 per day,[148] computed from July 1, 2022, until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN) and as implemented by RR No. 21-2018.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:

(*On leave*)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice
Acting Second Division Chairperson

[148] ₱387,445,559.32 x 12% / 365 days.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Acting 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.

JEAN MARIE A. BACORRO-VILLENA
Acting Presiding Justice