CTA Form No. 8

23-000221-0055

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

CTA CASE NO. 11163

GREEN CROSS, INC.,
Petitioner,

- versus -

NOTICE OF DECISION

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

ATTY. AYESHA HANIA B. GUILING-MATANOG
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Building
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

GATMAYTAN YAP PATACSIL GUTIERREZ & PROTACIO
30/F, 88 Corporate Center
Sedeño corner Valero Streets
Salcedo Village, Makati City

GREETINGS:

You are hereby notified by these presents that on **March 17, 2026,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **March 19, 2026.**

Atty. Maria Johanna F. Chan-Te
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

GREEN CROSS, INC., *Petitioner,*	**CTA CASE NO. 11163**
	Members:
-versus-	**BACORRO-VILLENA**, *Acting Chairperson, and* **CUI-DAVID**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: MAR 17 2026, 2:30PM

x- -x

DECISION

CUI-DAVID, J.:

Before the Court is a *Petition for Review*[1] filed by petitioner Green Cross, Inc. (**GCI** or **petitioner**) on May 24, 2023, praying for the cancellation or setting aside of the Final Decision on Disputed Assessment (**FDDA**) issued by respondent Commissioner of Internal Revenue (**CIR** or **respondent**).[2] The FDDA holds petitioner liable for deficiency Value-Added Tax (**VAT**) and Excise Tax in the amount of ₱131,552,133.73, inclusive of interest, surcharges, and administrative penalties.

THE PARTIES

Petitioner GCI is a corporation duly organized and existing under the laws of the Philippines, with principal office at the 14th and 15th Floors, Common Goal Tower, Finance corner Industry Street, Madrigal Business Park, Muntinlupa City.[3] Petitioner manufactures and trades personal care products such as splash colognes. Its splash cologne product line is

hr

[1] Docket – Vol. I, pp. 6-65.
[2] *Id.* at 73-76, Exhibit "P-1".
[3] *Id.* at 421, Joint Stipulation of Facts and Issues (JSFI), Facts, par. 1.

called Lewis & Pearl. In 2016, Lewis & Pearl had the following variants: (a) Blue Navy; (b) Cherry Blossom; (c) Cool Fantasy; (d) Dew Drops; (e) Dream; (f) Ice Water; (g); New York Beats; (h) Princess; (i) Rain; (j) Rock'n Rio; (k) Summer; (l) Sweet Paris; and (m) Wish.[4]

Respondent CIR is the chief of the Bureau of Internal Revenue (**BIR**). Under Section 4 of the Tax Code, the CIR has the "power to decide disputed assessments ... of internal revenue taxes ... subject to the exclusive appellate jurisdiction of the Court of Tax Appeals".[5]

THE FACTS

On March 27, 2018, respondent issued Letter of Authority (**LOA**) No. eLA201500089846,[6] authorizing Revenue Officers (**ROs**) Maria Leonora Raquel, Flor Jasmin Soriano, Ryan Calvin Morga, Gloria Morales, and Group Supervisor (**GS**) Armie Buena to examine petitioner's books of accounts and other accounting records for taxable year (**TY**) 2016.

The issuance of the LOA was followed by a *Letter* with the subject *"Data Files request for Tax Audit Per Letter of Authority No. eLA201500089846"* dated April 3, 2018,[7] and a *First Request for Presentation of Records,* which petitioner received on August 10, 2018.[8]

A Notice for Informal Conference (**NIC**) dated January 11, 2019, was received by petitioner through its Chief Accountant on February 13, 2019.[9]

On March 11, 2019, a *Memorandum* addressed to Teresita M. Dizon, OIC – Assistant Commissioner of the Large Taxpayer Services was issued by ROs Raquel, Soriano, Morales, Morga, and GS Buena, recommending the issuance of a Preliminary Assessment Notice (**PAN**).[10]

On April 26, 2019, petitioner received the PAN, with Details of Discrepancies, dated April 25, 2019, finding GCI liable for excise tax, VAT, and administrative penalties, among

---

4 Docket – Vol. III, pp. 1190-1191, Memorandum, par. 5.
5 Docket – Vol. I, p. 421, JSFI, Facts, par.2.
6 BIR Records, p. 4, Exhibit "R-1".
7 *Id.* at 3, Exhibit "R-2".
8 *Id.* at 5, Exhibit "R-3".
9 *Id.* at 648, Exhibit "R-4".
10 *Id.* at 732-736, Exhibit "R-5".

others, relating to the sales of splash cologne products for TY 2016, as follows:[11]

Excise tax	₱79,046,038.17
VAT on excise tax	9,485,524.57
Administrative penalty on excise tax	50,000.00
Administrative penalty on VAT on excise tax	50,000.00
Total	₱88,631,562.74

The PAN stated that petitioner was liable for excise tax because "[v]erification disclosed that sales of Lewis and Pearl/ Cologne amounting to P247,879,562.22 were not subjected to excise tax on non-essential goods hence assessed pursuant to Section 150(B) of the NIRC, as amended". It further stated that VAT on excise tax was assessed based on "Section 107 of the NIRC, as amended".[12]

Petitioner filed a *Reply* against the PAN on May 14, 2019.[13]

On July 18, 2019, petitioner received the Final Assessment Notice and Formal Letter of Demand (**FAN/FLD**) dated July 16, 2019, assessing the following amounts for TY 2016:[14]

Excise tax	₱80,516,790.24
VAT on excise tax	9,662,014.82
Administrative penalty on excise tax	50,000.00
Administrative penalty on VAT on excise tax	50,000.00
Total	₱90,278,805.06

Petitioner filed a *Request for Reinvestigation* against the FAN/FLD on August 16, 2019,[15] and submitted its supporting documents on October 15, 2019.[16]

On April 28, 2023, petitioner received the FDDA dated April 24, 2023, which found petitioner liable for deficiency taxes in the amount of ₱131,552,133.73, broken down as follows:

[11] Docket – Vol. I, p. 422, JSFI, Facts, par. 3; 587- 591, Exhibit "P-47".
[12] *Id.* at. 422, JSFI, Facts, par. 4.
[13] Docket – Vol. II, pp. 592-613, Exhibit "P-48".
[14] Docket – Vol. I, p. 422, JSFI, Facts, par. 5; Docket – Vol. II, pp. 614-625, Exhibit "P-49".
[15] Docket – Vol. II, pp. 626-644, Exhibit "P-50".
[16] *Id.* at 645-646, Exhibit "P-51", including attachments.

Income tax	₱13,959,623.93
VAT	1,775,310.00
Excise tax	103,287,678.40
VAT on excise tax	12,394,521.40
Administrative penalty on income tax	25,000.00
Administrative penalty on VAT	10,000.00
Administrative penalty on excise tax	50,000.00
Administrative penalty on VAT on excise tax	50,000.00
Total	₱131,552,133.73

On the same date, petitioner paid the amounts pertaining to the income tax assessment of ₱13,959,623.93, [17] VAT assessment of ₱1,775,310.00, [18] administrative penalty on income tax of ₱25,000.00,[19] and administrative penalty on VAT of ₱10,000.00. [20] Petitioner transmitted the corresponding proofs of payment to respondent on May 4, 2023.[21]

PROCEEDINGS BEFORE THE COURT

On May 24, 2023, petitioner filed its *Petition for Review*.[22]

Summons was served upon respondent on July 3, 2023, and upon the Office of the Solicitor General on June 30, 2023.[23] On July 28, 2023, respondent filed his *Motion for Extension of Time to File Answer*,[24] which the Court granted in a *Resolution* dated August 2, 2023. [25] Thus, on September 4, 2023, respondent filed his *Answer*.[26]

In a *Resolution* dated September 11, 2023, the Court noted respondent's *Answer* and referred the case to mediation.[27]

On October 11, 2023, respondent filed his *Manifestation with Compliance*, submitting the BIR Records in one folder consisting of 996 pages.[28]

---

17 Docket – Vol. II, pp. 881-883, Exhibits "P-52" to "P-54"; Docket – Vol. III, p. 1201, Memorandum, par. 29(a).
18 Docket – Vol. II, pp. 884-886, Exhibits "P-55" to "P-57"; Docket – Vol. III, p. 1201, Memorandum, Par. 29(b).
19 Docket – Vol. II, pp. 887-889, Exhibits "P-58" to "P-60"; Docket – Vol. III, p. 1201, Memorandum, Par. 29(c).
20 *Id.*
21 Docket – Vol. II, pp. 890-891, Exhibit "P-61".
22 Docket – Vol. I, pp. 6-65.
23 *Id.* at 172 & 174.
24 *Id.* at 175-178.
25 *Id.* at 180.
26 *Id.* at 182-193.
27 *Id.* at 195.
28 *Id.* at 201-203.

On October 23, 2023, the *Mediation Schedule* was submitted by the Philippine Mediation Center – Court of Tax Appeals (**PMC-CTA**).[29] This was followed by a *Request for Extension* filed on December 1, 2023,[30] which the Court granted in a *Resolution* dated January 5, 2024.[31] Still, on January 18, 2024, *Records Verification* revealed that no status report on the compromise settlement had been submitted by the parties.[32]

Thus, on February 19, 2024, considering that the Court had not received any report on the parties' supposed compromise agreement and to avoid further delay in the proceedings, the Pre-Trial Conference was set.[33]

On February 23, 2024, the *Mediator's Report,* with attached *Agreement to Mediate* and *Selection of Mediator,* was filed with the Court.[34]

Respondent's Pre-Trial Brief[35] and petitioner's *Pre-Trial Brief*[36] were filed on March 1, 2024.

In the pre-trial conducted on March 7, 2024, both counsels agreed to submit their Joint Stipulation of Facts (**JSFI**).[37] On the same date, the *Mediator's Report* stating that the mediation proceedings were unsuccessful was noted by the Court.[38]

On March 25, 2024, the parties filed their *JSFI.*[39] In a *Resolution* dated April 4, 2024, the Court approved the JSFI and deemed the pre-trial terminated.[40]

In the hearing on May 21, 2024, petitioner presented four witnesses, Mr. Chito P. Ibarrientos, Ms. Theresa Michelle S. Cortes, Ms. Shalimar Sunshine Salvino Feldia, and Ms. Shylene S. Santos, all of whom testified by way of Judicial Affidavits.[41]

---

29 *Id.* at 208.
30 *Id.* at 212.
31 *Id.* at 213.
32 *Id.* at 215.
33 *Id.* at 217-218.
34 *Id.* at 222-224.
35 *Id.* at 255-259.
36 *Id.* at 227-253.
37 *Id.* at 265-267, Order dated March 7, 2024.
38 *Id.* at 271-A, Resolution dated March 7, 2024.
39 *Id.* at 421-431.
40 *Id.* at 434.
41 Docket – Vol. II, pp. 451-453, Order dated May 21, 2024.

On May 29, 2024, petitioner filed its *Formal Offer of Evidence.*[42]

On May 30, 2024, the Pre-Trial Order was promulgated.[43]

On August 8, 2024, the Court resolved petitioner's *Formal Offer of Evidence*, admitting petitioner's exhibits, except for Exhibits "P-42" and "P-43".[44]

In the hearing on October 22, 2024, respondent presented RO Tugade, who testified by way of her Judicial Affidavit.[45]

On October 30, 2024, *Respondent's Formal Offer of Evidence* was filed.[46] The Court acted on this in a *Resolution* dated February 14, 2025, in which it admitted respondent's exhibits.[47]

Petitioner filed its *Memorandum* on March 13, 2025,[48] while respondent filed his *Memorandum* on March 24, 2025.[49]

On April 21, 2025, the case was submitted for decision.[50]

THE ISSUE

The parties stipulated the following issue for the Court's resolution, *viz.*:

> [W]hether or not GCI is liable to pay the following taxes assessed in the FDDA in relation to GCI's sales of splash cologne products for TY 2016: (a) deficiency excise tax amounting to ₱103,287,678.40; (b) VAT on excise tax amounting to ₱12,394,521.40; (c) administrative penalty on excise tax amounting to ₱50,000.00; and (d) administrative penalty on VAT on excise tax amounting to ₱50,000.00. [51]

PETITIONER'S ARGUMENTS

In its *Petition for Review* and *Memorandum*, petitioner mainly argues that its splash cologne products under the Lewis

---

42 *Id.* at 453-467.
43 Docket – Vol. III, pp. 1088-1123.
44 *Id.* at 1135-1137.
45 *Id.* at 1139-1140, Order dated October 22, 2024.
46 *Id.* at 1154-1163.
47 *Id.* at 1186-1188.
48 *Id.* at 1189-1243.
49 *Id.* at 1248-1257.
50 *Id.* at 1261.
51 Docket -Vol. I. p. 423, JSFI, B. Issue.

& Pearl product line are not subject to excise tax, and that consequently, both the excise tax assessment and the VAT on excise tax assessment, including the corresponding administrative penalties, should be cancelled.

First, petitioner argues that the term "toilet waters" under Section 150(b) of the National Internal Revenue Code (**NIRC**) of 1997, as amended, was used by the Legislature and by tax authorities in its technical sense. Prior to the enactment of Revenue Regulations (**RR**) No. 9-2023, "toilet waters" referred to fragrances with essential oil content of at least 3% by weight. Petitioner states that this is the definition provided in RR No. 8-1984 and is likewise close to the commercial meaning, citing Nigel Groom's book entitled *The Perfume Handbook*. Petitioner argues that the principle of administrative interpretation by reenactment applies to the definition of "toilet waters" under Section 150(b) of the NIRC of 1997, as amended, at least prior to the enactment of RR No. 9-2023. Petitioner likewise argues that "the fact that the [Secretary of Finance (**SOF**)] and the CIR provided a new definition of 'toilet water' in RR No. 9-2023 means that from the enactment of RR No. 8-1984 in 1984 to the enactment of RR No. 9-2023 on July 28, 2023, the definition of 'toilet water' under RR No. 8-1984 was the governing definition of toilet waters."

Petitioner recognizes the existence of Revenue Memorandum Circular (**RMC**) No. 17-2002, which provides that "all other colognes are, likewise, classified as toilet waters subject to excise tax under [Section 150(b) of the tax Code]... ." However, petitioner argues that RMC No. 17-2002 cannot amend RR No. 8-1984.

Now focusing on its Lewis & Pearl product line, petitioner states that its splash cologne products do not contain essential oils exceeding 3% by weight, and thus should not be considered "toilet waters" subject to excise tax. Petitioner claims that the essential oil content of its Lewis & Pearl product line "only ranged from 1.4500% to 2.1199% by weight."

Petitioner further urges the Court to interpret Section 150(b) of the NIRC of 1997, as amended, as a provision imposing a tax on non-essential goods. It contends that the said provision imposes a tax on luxury items and that, unlike the products expressly enumerated therein, its splash cologne products are "priced, marketed, and distributed, and also

M

perceived by the market, as inexpensive and common/basic items meant or necessary for everyday use."

Petitioner proceeds to cite the price ranges of its products and the retail outlets where they are sold. It likewise presents survey results purportedly reflecting market perception of its products. Petitioner states that "no reasonable person would think that [its splash cologne products] are in the same class as perfumes." According to petitioner, "its low-priced splash cologne products are intended to give ordinary Filipinos an inexpensive means to refresh themselves in their daily lives."

RESPONDENT'S ARGUMENTS

In his *Comment* and *Memorandum*, respondent argues that petitioner was properly assessed for deficiency excise tax and VAT. Respondent points out that in BIR Ruling No. 43-2000, as subsequently published in RMC No. 17-2002, the BIR already interpreted the term "toilet water" to include colognes. Respondent argues that "as the government agency charged with the enforcement of the law, the opinion of the CIR, [sic] in the absence of any showing that it is plainly wrong, is entitled to great weight." Countering the proposed definition of petitioner, respondent states that the "internal classification and the claimed "industry standards" cannot prevail over the interpretation explicitly provided by the BIR to the provision of the NIRC, as the agency in charge of interpreting tax laws." Respondent thus concludes that petitioner failed to overcome the presumption of validity and correctness of the assessment.

THE COURT'S RULING

The instant *Petition for Review* is unmeritorious.

The Court has jurisdiction over the instant case.

At the outset, the Court must resolve the threshold issue of jurisdiction before addressing the merits of the case.

NV

Section 7(a)(1) and (2) of Republic Act (**RA**) No. 1125,[52] as amended by RA No. 9282,[53] vests the Court of Tax Appeals (**CTA**) with exclusive appellate jurisdiction to review decisions or inactions of the CIR, to wit:

> SEC. 7. *Jurisdiction.* – **The CTA shall exercise**:
>
> (a) **Exclusive appellate jurisdiction to review by appeal, as herein provided**:
>
> (1) **Decisions of the [CIR] in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
>
> (2) **Inaction by the [CIR] in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial; (Emphasis supplied)

Moreover, Section 11 of RA No. 1125, as amended by RA No. 9282, prescribes the period for filing an appeal before the CTA, *viz.*:

> SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – **Any party adversely affected by a decision, ruling, or inaction of the [CIR]** . . . may file an **appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.** (Emphasis supplied)

---

52 An Act Creating the Court of Tax Appeals, June 16, 1954.

53 An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging Its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes, March 30, 2004.

The above provisions are substantially reiterated in Section 3(a)(1) and (2), Rule 4,[54] and Section 3(a), Rule 8[55] of the Revised Rules of the CTA.

Thus, the CTA has exclusive jurisdiction to review, by appeal, a decision, ruling, or inaction of the CIR, provided the appeal is filed by the taxpayer affected, or as worded by RA No. 9282, the party adversely affected, within thirty (30) days from receipt of such decision or ruling, or after the expiration of the period fixed by law for action.

In the instant case, petitioner received the FDDA dated April 24, 2023, on April 28, 2023.[56] Accordingly, it had 30 days from said date, or until **May 28, 2023**, to file a *Petition for Review*. Records show that petitioner filed its *Petition for Review* on **May 24, 2023**. The *Petition* was therefore timely filed.

At the outset, the Court likewise notes that petitioner does not raise any issue of denial of due process in the issuance of the assessment. Petitioner does not assail the validity of the assessment per se, but questions only respondent's imposition of excise tax on its Lewis & Pearl product line.

The definition of "toilet waters" under RR No. 8-1984 is inapplicable to Section 150(b) of the NIRC of 1997, as amended, which imposes excise tax on perfumes and toilet waters.

[54] *Section 3. Cases within the jurisdiction of the Court in Division.* — The Court in Division shall exercise:
(a) Exclusive original or appellate jurisdiction to review by appeal the following:
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: . . . .

[55] Sec. 3. Who may appeal; period to file petition. — (a) A party adversely affected by a decision, ruling, or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.

[56] Docket -Vol. I, p.8, Petition for Review (PFR), pars. 6 & 33; 76, Exhibit "P-1".

Section 150 of the NIRC of 1997, as amended, imposes excise tax on non-essential goods, including **perfumes and toilet waters**, thus:

> SEC. 150. Non-essential Goods. - There shall be levied, assessed and collected a tax equivalent to twenty-percent (20%) based on the wholesale price or the value of importation used by the Bureau of Customs in determining tariff and customs duties, net of excise tax and value-added tax, of the following goods:
>
> (a) All goods commonly or commercially known as jewelry, whether real or imitation, pearls, precious and semi-precious stones and imitations thereof; goods made of, or ornamented, mounted or fitted with, precious metals or imitations thereof or ivory (not including surgical and dental instruments, silver-plated wares, frames or mountings for spectacles or eyeglasses, and dental gold or gold alloys and other precious metals used in filling, mounting or fitting the teeth); opera glasses and lorgnettes. The term 'precious metals' shall include platinum, gold, silver and other metals of similar or greater value. The term 'imitations thereof' shall include platings and alloys of such metals;
>
> (b) **Perfumes and toilet waters**;
>
> (c) Yachts and other vessels intended for pleasure or sports. (Emphasis supplied)

The taxation of perfumes and toilet waters may be traced as early as 1977 under Section 194 of Presidential Decree (**PD**) No. 1158 (**NIRC of 1977**), which imposed a percentage tax:

> SECTION 194. Percentage tax on sales of jewelry, toilet preparations and others. — There shall be levied, assessed, and collected once only on every original sale, barter, exchange, or similar transaction for nominal or valuable consideration intended to transfer ownership of, or title to, the articles herein below enumerated a tax equivalent to seventy per centum of the gross value in money of the articles so sold, bartered, exchanged or transferred, such tax to be paid by the manufacturer or producer: Provided, That where the articles enumerated hereinbelow are manufactured out of materials subject to tax under this section, the total cost of such materials, as duly established, shall be deductible from the gross selling price or gross value in money of such manufactured articles:
>
> (a) All articles commonly or commercially known as jewelry, whether real or imitation, pearls, precious and semi-precious stones, and imitations thereof; articles made of, or ornamented, mounted or fitted with, precious metals or

hr

> imitations thereof or ivory (not including surgical instruments, silver-plated wares, frames or mountings for spectacles or eyeglasses, and dental gold or gold alloys and other precious metals used in filling, mounting or fitting of the teeth); opera glasses, and, lorgnettes. The term "precious metals" shall include platinum, gold, silver, and other metals of similar or greater value. The term "imitations thereof" shall include platings and alloys of such metals.
>
> (b) **Perfumes**, essences, extracts, **toilet waters**, cosmetics, petroleum jellies, hair oils, pomades, hair dressings, hair restoratives, hair dyes, aromatic cachous, toilet powders, and any similar substance, article, or preparations, by whatsoever name known or distinguished; and any of the above which are used or applied or intended to be used or applied for toilet purposes; except tooth and mouth washes, dentrifices, tooth paste, and talcum or medicated toilet powders.
>
> (c) Dice, mahjong sets and playing cards, except those locally manufactured;
>
> (d) Beauty parlor equipment and accessories.
>
> Any part or accessory of the above-mentioned articles shall be taxed at the same rate as the finished articles. (Emphasis supplied)

It bears emphasis that while the NIRC of 1977 imposed a **percentage tax** on perfumes and toilet waters, the NIRC of 1997 imposes an **excise tax** on these products.

Further, the terms "perfumes" and "toilet waters" are not defined in the NIRC itself. The first definition appears in RR No. 8-1984, otherwise known as the *Cosmetic Products Regulations*, which implemented Section 194 of the NIRC of 1977. Sections 2(b) and 2(e) of RR No. 8-1984 provide:

> SECTION 2. Articles taxable as cosmetic products. — The articles defined as follows shall be taxable as cosmetic products:
>
> . . . .
>
> (b) Perfumes are finished products consisting of fragrant materials such as concentrates (pasty essential oil) or absolutes (residual pleasantly odorous substance after extraction) dissolved in alcohol or in any other appropriate solvent with adjuvant and fixative (retardant to rate of evaporation of the pleasantly odorous constituents) as stabilizers.

. . . .

(e) Toilet waters are scented alcoholic or non-alcoholic preparations primarily used as body fragrance containing essential oils i.e. more than 3% by weight. *Examples: Lavander water, Eau de Cologne, Eau de Toilette.*

Upon the passage of the NIRC of 1997, no immediate regulation defining "toilet waters" was issued.

In 2000, the BIR issued BIR Ruling No. 043-00[57] to petitioner classifying Green Cross Baby Cologne as toilet waters subject to excise tax under Section 150(b), *viz.*:

In reply, please be informed that the term "cologne" which is an alcohol-based preparation is defined as follows:

"Cologne (toilet water) is a scented alcohol-based liquid used as perfume, after-shave lotion, or deodorant." (Hawley's Condensed Chemical Dictionary, 11th ed.)

Alcohol-based is that which contains ethyl alcohol or distilled spirits as chief ingredient. In view of the foregoing, **Green Cross Baby Cologne is classified as toilet waters covered by Section 150(b) of the Tax Code of 1997** which provides —

"SEC. 150. Non-essential Goods. — There shall be levied, assessed and collected a tax equivalent to twenty percent (20%) based on the wholesale price or the value of importation used by the Bureau of Customs in determining tariff and customs duties, net of excise tax and value-added tax, of the following goods:

"(a) . . .

"(b) Perfumes and toilet waters;

"(c) . . ."

Accordingly, all other colognes are, likewise, classified as toilet waters subject to excise tax under the same section, including Johnson's Baby Cologne which was classified as "other preparations" by BIR Ruling No. 59-81 dated March 30, 1981 and confirmed by BIR Ruling No. 535-88 dated November 19, 1988. (Emphasis supplied)

This ruling was reiterated in RMC No. 17-2002.

[57] Imposition of Excise Tax on Green Cross Baby Cologne, September 15, 2000.

In *Avon Products Manufacturing, Inc. v. Commissioner of Internal Revenue (**2015 Avon**)*,[58] the Supreme Court held that RR No. 8-1984 cannot be used to interpret Section 150(b) of the NIRC of 1997, as amended, because the nature of the tax imposed on toilet waters was changed from a percentage tax to an excise tax. The Supreme Court explained:

> As correctly found by the CTA *En Banc*, Revenue Regulation (RR) No. 8-84, which deals with the percentage tax on cosmetic products under Section 194 (renumbered to Section 163) of the 1977 National Internal Revenue Code (NIRC), may not be used to implement Section 150 (b) of the 1997 NIRC, as amended, which pertains to the imposition of excise tax. Albeit the words "toilets waters" remain unchanged, **the change in the nature of the tax from percentage tax to excise tax pursuant to Executive Order No. 273 is an effective repeal of Section 194** (renumbered to Section 163) **of the 1977 NIRC**. Therefore, the policy determinations made by the Secretary of Finance attending the implementing rule under the old provision on percentage tax, i.e., RR No. 8-84, cannot be made to apply to the current provision on excise tax, i.e., Section 150 (b) of the 1997 NIRC, as amended. Well-settled is the rule that rule-making power must be confined to details for regulating the mode or proceeding to carry into effect the law as it has been enacted. The power cannot be extended to amending or expanding the statutory requirements or to embrace matters not covered by the statute. Hence, with these considerations, it is up to the Secretary of Finance to issue a new implementing rule relative to the current nature of the tax on toilet waters; absent which, the general interpretation of the statute accorded by the Bureau of Internal Revenue should prevail. (Emphasis supplied)

The Supreme Court subsequently reaffirmed this ruling in its Resolution in *Avon Products Manufacturing, Inc. v. Commissioner of Internal Revenue (**2022 Avon**)*.[59] The Supreme Court emphasized that the modification introduced by Executive Order No. 273—which transformed the tax on toilet waters from a sales or percentage tax to an excise tax—constituted a substantive change in the law, rendering RR No. 8-84 inapplicable, *viz.*:

> When EO No. 273 renumbered Section 163 of PD No. 1994, the enumeration of articles covered by the provision was reduced to three. **EO No. 273 modified the kind of tax imposed on "toilet waters" in Section 163 from sales tax,** or the tax on the performance, carrying on, or exercise of an

[58] G.R. No. 205602, August 10, 2015 [Notice, First Division].
[59] G.R. Nos. 206286 *et al.*, March 2, 2022 [Notice, Third Division].

> activity or business, **to excise tax, a tax on the property**. The provision was transferred to "Title VI — Excise Taxes on Certain Articles," in Chapter 6, together with "Fireworks," "Cinematographic Films," "Saccharine," and "Automobiles." **The alteration in the nature of tax imposed on "toilet waters"** in Section 163 (previously Section 194) **indicates that a change of law was intended.** In *Laguna Metts Corp. v. Court of Appeals*, we held that "[a]s a rule, an amendment by the deletion of certain words or phrases indicates an intention to change its meaning. It is presumed that the deletion would not have been made if there had been no intention to effect a change in the meaning of the law or rule. The amended law or rule should accordingly be given a construction different from that previous to its amendment."
>
> Indeed, the reclassification of the tax imposed on "toilet waters" into excise taxes is an effective repeal of the old provision. Section 29 of EO No. 273 provides that "the provisions of any law, whether general or special, rules and regulations and other issuances or parts which are inconsistent with th[e] Order are repealed, amended or modified accordingly." RR No. 8-84 specifically deals with the tax imposed on cosmetic products under Sections 194 (b) and (e) of the 1977 Tax Code, to wit:
>
> . . . .
>
> **The sales tax or percentage tax** imposed by Section 194 (b) of the 1977 Tax Code **on "toilet waters" ceased to exist** when EO No. 273 modified the nature of the imposable tax to excise tax under Section 163. **In effect, RR No. 8-84**, which was integrated into the amended and replaced Section 194 (b) of the 1977 Tax Code, **is already inapplicable**. Hence, the definition of the term "toilet waters" as "containing essential oils, i.e., more than 3% by weight" given by RR No. 8-84 cannot be made to apply in determining the "toilet waters" subject to the excise tax under Section 150 (b) of the present Tax Code. (Emphasis supplied; Citations omitted)

The Supreme Court again reiterated the *2015 Avon* and *2022 Avon* rulings in *Avon Products Manufacturing, Inc. v. Commissioner of Internal Revenue **(2023 Avon)***,[60] where it denied Avon's petition for review on the ground of *res judicata* and reaffirmed that RR No. 8-84 is no longer applicable to the current excise tax regime.

[60] G.R. No. 224079, March 29, 2023 [Notice, Third Division].

In 2023, the BIR promulgated Revenue Regulations (**RR**) No. 9-2023,[61] which, among others, expressly defined the term "toilet waters" for purposes of Section 150(b) of the NIRC of 1997, as amended. Section 2(i) of RR No. 9-2023 provides:

> SECTION 2. Definition of Terms. — For purposes of these regulations, the following words and phrases shall have the meanings set forth herein:
>
> . . . .
>
> i. **Toilet Water — shall refer to a less concentrated form of any other type of perfume in liquid form used as body fragrance, aftershave or skin freshener** and shall include, but is not limited to, eau de toilette, eau de cologne, eau de fraiche, colognes, splash colognes, baby colognes, spray-on colognes, body sprays, body mists, body splash, aerosol colognes, aromatic waters such as florida water and lavender water, and aftershave lotions.
>
> Perfumes and toilet waters shall include all preparations to be placed in contact with the external parts of the human body that impart or give off an agreeable or pleasant odor or smell.
>
> Articles, substances or preparations which are similar or analogous to perfume or toilet water shall likewise be classified as perfume or toilet water. Similar or analogous articles are those advertised or held to be suitable for the same purpose regardless of the name by which it may be known or distinguished. **They shall likewise be subject to the applicable excise tax levied and imposed under Section 150 (b) of the NIRC of 1997, as amended**. (Emphasis supplied)

The CTA, sitting *En Banc,* has on several cases[62] addressed the issue of whether the definition of "toilet waters" in RR No. 8-1984 still stands, and whether colognes, with essential oil content of less than three percent (3%) by weight, are subject to the excise tax imposed on perfumes and toilet waters. Notably, one such case involved petitioner itself. In *Green Cross, Inc. v. Commissioner of Internal Revenue* (***2025 Green Cross***),[63] the Court *En Banc* unanimously held that petitioner's splash colognes are considered "toilet waters" under the NIRC and are, therefore, subject to excise tax.

---

[61] Subject: Rules and Regulations Governing the Imposition of Excise Tax on Perfumes and Toilet Waters as Provided under Section 150 (b) of the National Internal Revenue Code of 1997, as Amended, April 11, 2023.

[62] *Avon Products Manufacturing, Inc. v. Commissioner of Internal Revenue*, CTA *EB* Case No. 1598 (CTA Case No. 8812), October 2, 2018; *Avon Products Manufacturing, Inc. v. Commissioner of Internal Revenue*, CTA *EB* Case No. 1351 (CTA Case No. 8540), April 24, 2017.

[63] CTA *EB* Case No. 2912 (CTA Case No. 10401), March 3, 2025.

Considering that petitioner raised substantially the same arguments in the present case, the Court adopts and extensively quotes the ruling in *2025 Green Cross* with approval. In particular, as to petitioner's contention that the definition of "toilet waters" under RR No. 8-1984 remains controlling, the Court *En Banc* has already rejected this position, explaining as follows:

> Under Section 16 of EO No. 273, the 50% percentage tax on the sale of various cosmetic products was changed to 20% excise tax on non-essential goods, including perfumes and toilet waters. Notably, Section 29 of the same statute provides that the provisions of any law, whether general or special, rules and regulations and other issuances or parts thereof that are inconsistent with the Order are repealed, amended or modified accordingly.
>
> Section 29 of EO No. 273 is a general repealing clause, the effect of which is characterized as an implied repeal as it does not specify the orders, rules or regulations it intends to abrogate. Implied repeal occurs when two statutes cover the same subject matter and they are so inconsistent and incompatible that they cannot be reconciled or harmonized. Both cannot be given effect and therefore, one law's enforcement would nullify the other.
>
> A repeal by implication is frowned upon in this jurisdiction. They are not favored unless there is clear intent from the legislative body, or unless it is convincingly demonstrated that the laws are so contradictory and incompatible that coexistence is impossible.
>
> To reiterate, RR No. 8-84 was issued to implement sales or percentage tax on cosmetic products as imposed under Section 194 (b) of the NIRC of 1977. While, seemingly, the article taxed under Section 194 (b) of the NIRC of 1977 and RR No. 8-84 is identical to that taxed under Section 150 (b) of the NIRC of 1997, as amended, the actual subject of the taxation and the character of the tax imposed upon it are not the same. As succinctly put by the Court in Division:
>
>> "The distinction between a sales tax and an excise tax is clear. A sales tax is a tax imposed on the act of selling the product. It is not a tax on the property sold. On the other hand, an excise tax is a tax levied on a specific article. Otherwise stated, excise taxes imposed under Title VI on "Excise Taxes on Certain Goods and Services" of the NIRC of 1997, as amended, are taxes on property which are imposed on "goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition and to

hv

> things imported." Excise taxes, as imposed under the NIRC of 1997, as amended, do not pertain to the performance, carrying on, or exercise of an activity, at least not to the extent of equating excise with business taxes."
>
> The subject matter of the imposition of percentage or sales tax is the act of selling a product, while for excise taxes, it is the manufacture, production, or importation of specific goods. Since these taxes are imposed on different subject matters and serve distinct purposes, they are inherently shaped by unique policy considerations. Consequently, any rules and regulations promulgated to implement the amended law must align with the particular policy considerations behind the new tax imposed. Clearly, the rationale behind RR No. 8-84 is inconsistent with the policy framework for excise tax on toilet waters under Section 150 (b) of the NIRC of 1997, as amended. Thus, in implementing Section 29 of EO No. 273, RR No. 8-84 must be considered implicitly repealed upon its effectivity.
>
> Furthermore, even without invoking the general repealing clause under Section 29 of EO No. 273, RR No. 8-84 must still be deemed repealed by Section 16 of the same Executive Order. Since Section 194 of the NIRC of 1977, which gave life to RR No. 8-84, has been substantially amended and replaced by Section 150 of the NIRC of 1997, as amended, it logically follows that RR No. 8-84, which relied on the former provision, is now deemed inapplicable. With the repeal of the law it was intended to implement, there is nothing for RR No. 8-84 to enforce.
>
> In light of the foregoing, RR No. 8-84, which governs the imposition of a percentage or sales tax on cosmetic products, cannot be used to implement Section 150 (b) of the NIRC of 1997, as amended, which pertains to the imposition of excise tax. Thus, **the definition of "toilet waters" under RR No. 8-84 cannot be invoked by petitioner to support its claim for refund.**[64] (Emphasis supplied)

Petitioner argues that "the principle of administrative interpretation by reenactment is applicable to the definition of "toilet waters" under Section 150(b) of the NIRC of 1997, as amended, at least prior to the enactment of RR No. 9-2023 in year 2023." Petitioner likewise argues that "the fact that the SOF and CIR provided a new definition of 'toilet water' under RR No. 9-2023 means that from the enactment of RR No. 8-1984 in 1984 to the enactment of RR No. 9-2023 on July 28, 2023, the

---

[64] *Id.*

definition of 'toilet water' under RR No. 8-1984 was the governing definition of toilet waters."[65]

The Court is not persuaded.

In *2025 Green Cross*, the Court *En Banc* definitively ruled:

> The principle of legislative approval of administrative interpretation by reenactment holds that "the reenactment of a statute substantially unchanged is persuasive indication of the adoption by Congress of a prior executive construction." The rationale behind this principle is that the legislature is presumed to have reenacted the law with full awareness of the existing revenue regulations and to have implicitly approved or affirmed them because they would carry out the legislative purpose.
>
> Petitioner's argument hinges on the presumption that lawmakers were aware of RR No. 8-84's definition of "toilet waters" at the time they enacted EO 273 and NIRC of 1997, as amended. The crucial determinant here, however, is whether the reenacted statute is "substantially unchanged."
>
> As previously discussed, there was a substantial change in the nature of the tax imposed between Section 194 (b) of the NIRC of 1977 and Section 150 (b) of the NIRC of 1997, as amended. That the change has nothing to do with the definition of a word is irrelevant. The shift in the nature of the tax constitutes a substantial revision, involving different policy considerations. As the Supreme Court held in *Avon Products Manufacturing, Inc. vs. Commissioner of Internal Revenue*, *viz.*:
>
>> "Albeit the words 'toilets waters' remain unchanged, **the change in the nature of the tax from percentage tax to excise tax pursuant to Executive Order No. 273 is an effective repeal of Section 194 (renumbered to Section 163) of the 1977 NIRC.** Therefore, the policy determinations made by the Secretary of Finance attending the implementing rule under the old provision on percentage tax, i.e., RR No. 8-84, cannot be made to apply to the current provision on excise tax, i.e., Section 150 (b) of the 1997 NIRC, as amended. Well-settled is the rule that rule-making power must be confined to details for regulating the mode or proceeding to carry into effect the law as it has been enacted. The power cannot be extended to amending or expanding the statutory requirements or to embrace matters not

hw

[65] Docket – Vol. III, pp. 1189-1243, Memorandum, pars. 69-90.

> covered by the statute. Hence, with these considerations, it is up to the Secretary of Finance to issue a new implementing rule relative to the current nature of the tax on toilet waters; absent which, the general interpretation of the statute accorded by the Bureau of Internal Revenue should prevail."
>
> . . . .
>
> Petitioner's argument that the Court in Division made a policy determination by concluding that RR No. 8-84's definition of "toilet waters" cannot apply to excise-taxed toilet waters because of the change of the nature of tax is likewise without merit.
>
> Policy decisions fall entirely within Congress' discretion, exercised through its plenary legislative powers. The Court, as a rule, cannot pass upon questions of wisdom, justice, or expediency of legislation done within the co-equal branch's authority. The judiciary's role is to interpret laws, holding exclusive jurisdiction and ultimate authority within its own sphere.
>
> In this case, by refraining from applying the definition in RR No. 8-84, given its repeal, the Court avoided making a policy determination. Had it chosen to apply the repealed regulation, this could have been interpreted as extending or creating policy beyond the scope of current law. Instead, it adhered to its interpretative role by recognizing the legal change (*i.e.*, the repeal of RR No. 8-84) and applying only the law as it stands.
>
> The paucity of merit in petitioner's position is evident in the multiple cases decided by the Supreme Court holding that RR No. 8-84 is already inapplicable. Under the doctrine of *stare decisis*, a conclusion reached in one case should be applied to those that follow if the facts are substantially the same, even though the parties may be different. Once a question of law has been examined and decided, it should be deemed settled and closed to further argument.[66] (Citations omitted)

Petitioner recognizes the existence of RMC No. 17-2002, which provides that "all other colognes are, likewise, classified as toilet waters subject to excise tax under [Section 150(b) of the tax Code]...". However, petitioner asserts that RMC No. 17-2002 could not amend or repeal RR No. 8-1984.

[66] *Id.*

Again, in *2025 Green Cross*, the Court *En Banc* upheld the validity of RMC No. 17-2002, thus:

> As it has been established that RR No. 8-84 has been repealed, the Court must now rely solely on the law and any relevant issuances to determine the definition of "toilet waters." It is a well-settled rule that rulings of administrative agencies interpreting the law are persuasive and deserve great weight, provided they are in harmony with the Constitution and the laws they are meant to implement. In this regard, Section 4 of the NIRC of 1997, as amended, vests the CIR with the exclusive authority to interpret tax laws:
>
>> "Section 4. Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases. — The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance. The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals."
>
> In line with this authority, the CIR, through BIR Ruling No. 043-2000 dated September 15, 2000, and later published in RMC No. 17-02, defined "toilet waters" as a scented alcohol-based liquid used as perfume, after-shave lotion, or deodorant. This definition was drawn from Hawley's Condensed Chemical Dictionary, 11th edition.
>
> Section 4 of the NIRC of 1997, as amended, is clear: the CIR has the authority to interpret the NIRC and other national tax laws, subject to review by the SOF. In issuing BIR Ruling No. 043-2000, the CIR was merely exercising its mandate to interpret a provision of the NIRC. Notably, the SOF, who has the authority to review and reverse the CIR's rulings, has not modified or overturned this ruling.
>
> Prescinding from the foregoing, the CIR's interpretation of the term "toilet waters" in BIR Ruling No. 043-2000 should be accorded great weight. The CIR did not introduce a new meaning to the term "toilet waters" in Section 150 (b) of the NIRC of 1997, as amended, but merely fulfilled its mandate to interpret the law. The CIR exercised its authority appropriately, neither expanding nor limiting the law's scope unduly. Given that Section 150 (b) of the NIRC of 1997, as amended, does not define "toilet waters," the legal maxim *ubi lex non distinguit, nec nos distinguere debemus* (where the law

> does not distinguish, we should not distinguish) is applicable. **In the absence of a statutory distinction, the BIR Ruling governs, rendering the term "toilet waters" applicable to all kinds of toilet waters, including petitioner's colognes and body sprays**.[67] (Emphasis supplied)

Accordingly, the foregoing pronouncements of the Court *En Banc* in *2025 Green Cross*, together with the Supreme Court's rulings in the *2015 Avon* and *2022 Avon* cases, admit of no other legal conclusion than that petitioner's splash colognes are subject to excise tax under Section 150(b) of the NIRC of 1997, as amended.

Computation of deficiency excise tax and deficiency VAT on excise tax

Having found that petitioner's splash colognes are subject to excise tax under Section 150(b) of the NIRC of 1997, as amended, the Court now proceeds to examine the evidence on record and determine whether the deficiency tax assessment was properly computed.

The FDDA assessed a deficiency excise tax against petitioner in the total amount of **₱103,287,678.40**, inclusive of interest and surcharges, computed as follows:

Sales - Cologne (net of VAT) (Annex A-8)		247,879,562.22
Excise tax rate		20%
Basic tax due:		49,575,912.44
Add: Surcharge	12,393,978.11	
20% Interest p.a. (01/11/2017 to 12/31/2017)	9,616,368.77	
12% Interest p.a. (01/01/2018 to 4/30/2023)	31,701,419.08	53,711,765.96
TOTAL AMOUNT DUE		**103,287,678.40**

BIR Records[68] further show that the "Sales – Cologne (net of VAT)" were broken down as follows:

PC Cologne - L&P 25ML	22,482,840.60
PC Cologne - L&P 50ML	71,327,152.16
PC Cologne - L&P 70ML	19,168,678.64
PC Cologne - L&P 75ML	33,043,623.30
PC Cologne - L&P 125ML	135,659,026.01

---

[67] *Id.*
[68] BIR Records, p. 636, Annex "A-8".

Total sales	281,681,320.71
VAT portion	33,801,758.49
Sales net of VAT	**247,879,562.22**
Excise tax rate	20%
Basic deficiency excise tax	**49,575,912.44**

Notably, in its *Petition for Review,* [69] *Memorandum,*[70] and even in its *Request for Reinvestigation*[71] against the FAN/FLD, petitioner did not dispute the BIR's determination that its VAT-exclusive sales of the Lewis & Pearl cologne line amounted to ₱247,879,562.22. In tax assessments, the findings of the BIR are presumed correct and made in good faith. It is the taxpayer who bears the burden of overcoming this presumption by clear, competent, and convincing evidence; absent such proof, the assessment stands. Accordingly, absent contrary evidence from petitioner, the Court adopts the amount of ₱247,879,562.22 as the established VAT-exclusive sales base.

Section 150 of the NIRC of 1997, as amended, provides that excise tax on perfumes and toilet waters shall be imposed at twenty percent (20%) based on the wholesale price, net of excise tax and value-added tax, *viz.*:

> SEC. 150. Non-essential Goods. - There shall be levied, assessed, and collected a tax equivalent to **twenty-percent (20%) based on the wholesale price or the value of importation used by the Bureau of Customs in determining tariff and customs duties, net of excise tax and value-added tax**, of the following goods:
>
> ...
>
> (b) **Perfumes and toilet waters**; (Emphasis supplied)

Applying the statutory rate to the undisputed sales base yields:

Sales net of VAT	247,879,562.22
Excise tax rate	20%
Basic deficiency excise tax	**49,575,912.44**

Accordingly, the Court affirms respondent's computation of the basic deficiency excise tax in the amount of **₱49,575,912.44**.

[69] Docket – Vol. I, pp. 6-65.
[70] Docket – Vol. III, pp. 1189-1243.
[71] Docket – Vol. II, pp. 626-644, Exhibit "P-50".

With respect to the deficiency VAT on excise tax, Section 106(A)(1) of the NIRC of 1997, as amended,[72] defines "gross selling price" as the VAT base for the sale of goods and properties, and expressly provides that **excise tax forms part of the gross selling price**:

> The term 'gross selling price' means the total amount of money or its equivalent which the purchaser pays or is obligated to pay to the seller in consideration of the sale, barter or exchange of the goods or properties, excluding the value-added tax. **The excise tax, if any, on such goods or properties shall form part of the gross selling price**. (Emphasis supplied)

Thus, excise tax forms part of the VAT base. Consequently, once the excise tax is found due, the VAT liability correspondingly increases. A determination of deficiency excise tax necessarily results in a corresponding deficiency VAT on such excise tax.

For avoidance of doubt, the deficiency VAT affirmed herein pertains solely to the excise-tax component that, by operation of law, forms part of the gross selling price; it is not a re-imposition of VAT on total sales. It represents only the incremental VAT attributable to the excise tax that should have been included in the VAT base.

The deficiency VAT on excise tax was computed as follows:

Basic excise tax (forming part of the gross selling price)	₱49,575,912.44
VAT rate	12%
Deficiency VAT on excise tax	**₱5,949,109.49**

The Court finds the foregoing computation consistent with Section 106(A)(1) of the NIRC of 1997, as amended. Accordingly, the assessment of deficiency VAT on excise tax in the amount of **₱5,949,109.49** is likewise affirmed.

[72] The quoted provision is prior to the amendments of the Republic Act (RA) No. 11976, otherwise known as the Ease of Paying Taxes Act. This is considering that the taxable year involved herein is 2016, when RA No. 11976 has not yet taken effect.

Recomputation of interest and surcharges

The Court now proceeds to recompute the interest and surcharges on the assessed deficiency excise tax and deficiency VAT on excise tax.

Before its amendment by Republic Act (**RA**) No. 10963, otherwise known as the Tax Reform for Acceleration and Inclusion Law (**TRAIN**), Section 249 of the NIRC of 1997, as amended, imposed **20% annual interest** on unpaid taxes, including deficiency and delinquency interest, reckoned from the date prescribed for payment until full payment, *viz.*:

> SEC. 249. Interest
>
> (A) In General. There shall be assessed and collected on any unpaid amount of tax, **interest at the rate of twenty percent (20%) per annum**, ... , from the date prescribed for payment until the amount is fully paid.
>
> (B) **Deficiency Interest**. Any deficiency in the tax due ..., shall be subject to the interest prescribed in Subsection (A) hereof, ... from the date prescribed for its payment until the full payment thereof.
>
> (C) **Delinquency Interest**. In case of failure to pay:
>
> . . . .
>
> (3) A deficiency tax, or any surcharge or interest thereon **on the due date appearing in the notice and demand** of the Commissioner, there shall be assessed and collected on the unpaid amount, **interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid,** ... .

Under the TRAIN Law (effective January 1, 2018), Section 249 imposed interest at **double the legal interest rate set by the Bangko Sentral ng Pilipinas** (12% per annum during the relevant period), and deficiency and delinquency interest may no longer be imposed simultaneously, as follows:

> SEC. 249. Interest
>
> (A) In General. There shall be assessed and collected on any unpaid amount of tax, **interest at the rate of <u>double the legal interest rate</u>** ... as set by the Bangko Sentral ng Pilipinas from the date prescribed for payment until the amount is fully paid: **<u>Provided, That in no case shall the deficiency and the delinquency interest prescribed under</u>**

M

> **<u>Subsections (B) and (C) hereof, be imposed simultaneously</u>**.
>
> (B) **Deficiency Interest**. Any deficiency in the tax due, ..., shall be subject to the interest prescribed in Subsection (A) hereof, ... from the date prescribed for its payment until the full payment thereof, **<u>or upon issuance of a notice and demand by the Commissioner of Internal Revenue, whichever comes earlier.</u>**
>
> (C) Delinquency Interest. In case of failure to pay:
>
> . . . .
>
> (3) A deficiency tax, or any surcharge or interest thereon **on the due date appearing in the notice and demand** of the Commissioner, there shall be assessed and collected on the unpaid amount, **interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid**, ...

Further, in computing the interest, the Court is guided by RR No. 21-2018,[73] which provides that when the tax liability became due prior to January 1, 2018 but remains unpaid thereafter, as in the present case, the applicable rates are: **20%** deficiency and/or delinquency interest until December 31, 2017, and **12%** deficiency and/or delinquency interest from January 1, 2018 until full payment.[74]

For the period prior to January 1, 2018, both deficiency and delinquency interest may be imposed in accordance with the old Section 249.

Applying these transitory rules, the Court now determines the proper reckoning dates and computes the interest due.

---

[73] Regulations Implementing Section 249 (Interest) of the NIRC of 1997, as Amended under Section 75 of the TRAIN Law, September 14, 2018

[74] SECTION 6. Transitory Provision. — In cases where the tax liability/ies or deficiency tax/es became due before the effectivity of the TRAIN Law on January 1, 2018, and where the full payment thereof will only be accomplished after the said effectivity date, the interest rates shall be applied as follows:

Period	Applicable Interest
For the period up to December 31, 2017	Deficiency and/or delinquency interest at 20%
For the period January 1, 2018 until full payment of the tax liability	Deficiency and/or delinquency interest at 12%

The double imposition of both deficiency and delinquency interest under Section 249 prior to its amendment will still apply in so far as the period between the date prescribed for payment until December 31, 2017.

1. Excise Tax

Under Section 130(A)(2) of the NIRC of 1997, as amended, excise tax on domestic products is due **before removal from the place of production.**[75]

The records are bereft of any information as to the specific dates of removal of petitioner's Lewis & Pearl cologne products. However, the FDDA reckoned deficiency interest beginning **January 11, 2017**. Absent contrary evidence and applying the presumption of correctness of assessments, the Court adopts January 11, 2017 as the reckoning date.

2. VAT on Excise Tax

Under Section 114(A) of the NIRC of 1997, as amended, VAT is payable within **twenty-five (25) days following the close of each taxable quarter.**[76] Thus, the deficiency interest on VAT is reckoned from:

Quarter	Reckoning Date
VAT Q1	April 25, 2016
VAT Q2	July 25, 2016
VAT Q3	October 25, 2016
VAT Q4	January 25, 2017

3. Delinquency Interest

Delinquency interest runs from the **due date appearing in the notice and demand of the Commissioner**, regardless of whether there is a timely judicial appeal. RR No. 12-1999,[77] as amended by RR No. 18-2013,[78] clarifies that this refers to the date "the assessment was upheld", *i.e.*, the date of the issuance of the FDDA.

[75] SEC. 130. Filing of Return and Payment of Excise Tax on Domestic Products. –

. . . .

(2) Time for Filing of Return and Payment of the Tax. - Unless otherwise specifically allowed, the return shall be filed and the excise tax paid by the manufacturer or producer **before removal of domestic products from place of production**: … . (Emphasis supplied)

[76] SEC. 114. Return and Payment of Value-Added Tax.

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

[77] Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty, September 6, 1999.

[78] Amending Certain Sections of Revenue Regulations No. 12-99, November 28, 2013.

Since the FDDA was issued on **April 24, 2023**, delinquency interest is reckoned from that date.

4. Surcharge

Under Section 248(A) of the NIRC of 1997, as amended,[79] a **25% surcharge** is imposed for failure to file or pay the tax due, including deficiency taxes. Accordingly, the basic deficiency excise tax and the deficiency VAT on excise tax are subject to the 25% surcharge.

Applying the foregoing rules, the total deficiency excise tax, inclusive of deficiency interest and surcharge, amounts to **₱103,173,585.89**, computed as follows:

Basic deficiency excise tax	49,575,912.44
Deficiency interest (49,575,912.44 x 20% x 354/365) (1/11/2017 to 12/31/2017)	9,616,368.77
Deficiency interest (49,575,912.44 x 12% x 1,938/365) (1/1/2018 to 4/23/2023)	31,587,326.57
Surcharge (49,575,912.44 x 25%)	12,393,978.11
Total deficiency excise tax	**103,173,585.89**

Similarly, the total deficiency VAT on excise tax, inclusive of deficiency interest and surcharge, until April 23, 2023, amounts to **₱12,798,468.68**, computed as follows:

	Q1	**Q2**	**Q3**	**Q4**
Basic deficiency VAT [A][80]	1,535,073.75	1,492,303.27	1,616,831.28	1,304,901.20
Deficiency interest ([A] x 20% x [C]/365) ([B] to 12/31/2017)	517,298.82	428,475.02	382,723.90	243,104.88

[79] SEC. 248. Civil Penalties

(A) There shall be imposed, in addition to the tax required to be paid, a penalty equivalent to twenty-five percent (25%) of the amount due, in the following cases:

(1) Failure to file any return and pay the tax due thereon as required under the provisions of this Code or rules and regulations on the date prescribed; or

...

(3) Failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessment; or ...

[80] The basic deficiency VAT were computed on the basis of the breakdown of sales provided under Annex "A-8" of the BIR Records, *viz.*:

	Sales per quarter (A)	**Basic deficiency excise tax per quarter (B)** *(49,575,912.44 x [A] / 281,681,320.71)*	**Basic deficiency VAT on excise tax per quarter** *(B x 12%)*
Sales, Q1	72,683,415.96	12,792,281.21	**1,535,073.75**
Sales, Q2	70,658,298.82	12,435,860.59	**1,492,303.27**
Sales, Q3	76,554,511.30	13,473,593.99	**1,616,831.28**
Sales, Q4	61,785,094.63	10,874,176.65	**1,304,901.20**
	281,681,320.71	49,575,912.44	**5,949,109.49**

Mr

	Q1	Q2	Q3	Q4
Deficiency interest ([A] x 12% x 1,938/365) (1/1/2018 to 4/23/2023)	978,073.29	950,822.05	1,030,165.16	831,418.69
Surcharge ([A] x 25%)	383,768.44	373,075.82	404,207.82	326,225.30
Total deficiency VAT on excise tax	3,414,214.29	3,244,676.16	3,433,928.15	2,705,650.07
Grand total				**12,798,468.68**
Due date [B]	4/25/2016	7/25/2016	10/25/2016	1/25/2017
Number of days to December 31, 2017 [C]	615	524	432	340

The total deficiency tax amounts to **₱115,972,054.57**. Accordingly, the daily delinquency interest, reckoned from the date of the issuance of the FDDA on April 24, 2023, is **₱38,127.80**, computed as follows:

Total deficiency excise tax	103,173,585.89
Total deficiency VAT on excise tax	12,798,468.68
Total deficiency tax	115,972,054.57
Daily delinquency interest *(115,972,054.57 x 12% x 1/365)*	**38,127.80**

WHEREFORE, premises considered, the *Petition for Review* is **DENIED** for lack of merit.

Accordingly, petitioner is **ORDERED TO PAY** respondent the total amount of ₱115,972,054.57, representing the deficiency excise tax and deficiency VAT on excise tax, inclusive of the 25% surcharge and deficiency and delinquency interest imposed under Sections 248(A) and 249(B) of the NIRC of 1997, as amended.

In addition, petitioner is **ORDERED TO PAY** respondent delinquency interest at the rate of twelve percent (12%) per annum on the ₱115,972,054.57 total amount due, equivalent to ₱38,127.80 per day, computed from April 24, 2023 until full payment, pursuant to Section 249(C) of the NIRC of 1997, as amended.

Finally, pursuant to Section 13 of RA No. 9282, respondent is **AUTHORIZED TO SEIZE AND DISTRAINT** any goods, chattels, or effects, and the personal property, including stocks and other securities, debts, credits, bank accounts, and interests in and rights to personal property, and/or to levy the real property, of petitioner, in sufficient quantity to satisfy the taxes herein ordered to be paid, and the increments thereto incident to delinquency.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
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.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Special First Division Acting Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice