

Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

**PEOPLE
OF THE
PHILIPPINES**

OF THE

Plaintiff,

CTA. Crim. Case No. O-1482

For : Violation of Section 255 of the
National Internal Revenue Code
("NIRC") of 1997, as amended

- versus -

Members :

EDUARDO YU TAN

Unit G03 Grand Midroi, 160 Legaspi
St., Legaspi Village, Makati City
1229

BACORRO-VILLENA,

Chairperson

CUI-DAVID, and

TESTON, JJ.

(At-Large)

Promulgated:

SEP 30 2026

4:23 PM

Accused.

X-----

-X

RESOLUTION

On 12 August 2026, Plaintiff filed an *Information* dated 29 June 2026 against the Accused, **EDUARDO YU TAN** ("Tan"), for violation of Section 255¹ of the **NIRC** of 1997, as amended, the accusatory portion of which reads:

...

On or about the 5th day of February 2021, and subsequently thereafter, in Makati City, Philippines, accused **EDUARDO YU TAN**, a taxpayer and the sole proprietor of **ALLIUM RESTAURANT**, with business address at Unit G03 Grand Midori, 160 Legaspi St., Legaspi Village, Makati City, Metro Manila, did then and there willfully and unlawfully fail, refuse and neglect to pay his deficiency internal revenue tax liabilities of for taxable period from 01 January 2017 to 03 September 2018, to wit:

¹ **Sec. 255.** Failure to File Return, Supply Correct and Accurate Information, Pay Tax Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.

Kind of Tax	Basic Tax Due (in PhP)
Income Tax (for taxable year 2017)	1,981,256.18
Value Added Tax (for taxable year 2017)	1,028,663.91
Value Added Tax (for taxable year 2018)	1,591,762.37
Expanded Withholding Tax (for taxable year 2017)	10,183.50
Withholding Tax on Compensation (for taxable year 2017)	37,912.56
Withholding Tax on Compensation (for taxable year 2018)	1,592.81

or in the total amount of PhP4,651,371.33, as well as the computed interest therefor in the amount of PhP696,316.55 (Income Tax for taxable year 2017), PhP388,581.32 (Value Added Tax for taxable year 2017), PhP458,427.56 (Value Added Tax for taxable year 2018), PhP3,880.33 (Expanded Withholding Tax for taxable year 2017), PhP14,446.24 (Withholding Tax on Compensation) for taxable year 2017, and PhP466.59 (Withholding Tax on Compensation for taxable year 2018), despite notice and due service of said assessments and Warrants of Dstraint and/or Levy and Garnishment, and despite demands made upon him to pay such tax, to the damage and prejudice of the Government of the Republic of the Philippines in the total amount of PhP6,213,489.92.

CONTRARY TO LAW.

...

In support of the *Information*, the Plaintiff submitted the following documents:

1. Certified True Xerox Copy² ("CTXC") of the *Resolution* dated 29 June 2026 by the Office of the City Prosecutor of Makati;
2. *Minutes* dated 12 and 19 May 2026;
3. CTXC of the *Information Data Form* dated 13 April 2026;

² More properly termed "Certified True Copy" ("CTC").

4. *Referral Letter* (to file criminal and civil charges) signed by the Bureau of Internal Revenue ("**BIR**") OIC-Regional Director Antonio L. Ilagan;
5. Original Copy of the *Joint Complaint-Affidavit* dated 13 April 2026;
6. Copy of the Internal Revenue Integrated Tax System (IRIS) generated Taxpayer Information dated 12 March 2026;
7. Certified True Copy ("**CTC**") *Letter of Authority* No. eLA201600036125 (LOA-047-2018-00000622) dated 23 November 2018 ("**LOA**");
8. CTC of the *Checklist of Requirements* dated 03 December 2018;
9. CTC of the *Notice of Informal Conference; Letter* dated 23 April 2019;
10. CTC of the undated *Special Power of Attorney* executed by **Tan**;
11. CTCs of the *Preliminary Assessment Notice ("**PAN**")* and *Details of Discrepancies ("**DoD**")* both dated 08 January 2021 with *Acknowledgement of Receipt* on 12 January 2021;
12. CTCs of the Six (6) *Assessment Notices* all dated 05 February 2021;
13. *Formal Letter of Demand ("**FLD/FAN**")* with *Details of Discrepancies ("**DoD**")* both dated 05 February 2021 and *Acknowledgement of Receipt* on 09 February 2021;
14. CTC of the Notarized *Special Power of Attorney* executed by **Tan** dated 20 January 2021;
15. CTC of the **BIR** *Memorandum* dated 01 July 2021;
16. CTC of the *Memorandum of Assignment* dated 16 September 2021;
17. CTC of the *Warrant of Distrainment and/or Levy ("**WDL**")* dated 24 September 2021;
18. CTC of Seventeen (17) *Warrants of Garnishment ("**WoG**")*; and
19. CTC of the *2nd Indorsement* dated 08 September 2025.

The Court shall now proceed to determine whether probable cause exists to warrant the issuance of *Warrant of Arrest*.

In *Silver, et al. v. Daray, et al.*³, the Supreme Court explained that when a trial court decides to issue a warrant of arrest, the same must be issued only after the judge has personally determined the existence of probable cause. Thus :

If the trial court decides to issue a warrant of arrest, such warrant must have been issued after compliance with the requirement that probable cause be personally determined by the judge. At this stage, the judge is tasked to merely determine the probability, not the certainty of guilt of the accused. In doing so, the judge need not conduct a *de novo* hearing; he or she only needs to personally review the prosecutor's initial determination and see if it is supported by substantial evidence.

In the same case, the Supreme Court further explained the nature and quantum of probable cause required for the issuance of a warrant of arrest, *to wit*:

Probable cause for the purpose of issuing a Warrant of arrest pertains to facts and circumstances which would lead a reasonably discreet and prudent person to believe that an offense has been committed by the person sought to be arrested. In determining probable cause, the average person weighs facts and circumstances without resorting to the calibration of our technical rules of evidence of which his or her knowledge may be nil. Rather, the person relies on the calculus of common sense of which all reasonable persons have an abundance. Thus, the standard used for issuance of a warrant of arrest is less stringent than that used for establishing the guilt of the accused. So long as the evidence presented shows a *prima facie* case against the accused, the trial court judge has sufficient ground to issue a warrant of arrest against him or her.⁴

Thus, at this stage of the proceedings, the Court is tasked to determine only the probability, and not the certainty, of the guilt of the Accused. This determination does not require a *de novo* hearing. Rather, the Court must personally evaluate the Prosecutor's determination and the supporting evidence to ascertain whether they sufficiently establish a *prima facie* case against the Accused.

³ G.R. No. 219157, August 14, 2019.

⁴ *Id.*

In this case, **Tan** is charged with willful failure to pay deficiency internal revenue taxes under Section 255 of the **NIRC**, as amended.

In *People of the Philippines v. E & D Parts Supply, Inc.*⁵, the Supreme Court laid down the elements necessary to secure a conviction for the offense charged. *To wit:*

To secure a conviction under Section 255 in relation to Sections 253(d) and 256 of the Tax Code, the following elements must be established: (1) the corporate taxpayer is required by law to pay the tax ; (2) the corporate taxpayer failed to pay the tax at the time or times required by law or rules and regulations ; and (3) the accused, as the employee responsible for the violation, willfully failed to pay such tax at the time or times required by law or rules and regulations.

(Underscoring supplied.)

Although the above-mentioned case involved a corporate taxpayer and its responsible officer, the pertinent elements of the offense mandate that the taxpayer be required by law to pay the tax, that the taxpayer failed to pay the same at the time required by law or rules and regulations, and that such failure to pay was willful.

Guided by the foregoing, and upon personal evaluation of the *Information* and supporting evidence, the Court finds no probable cause against **Tan**, the offense charged having already prescribed.

Section 281 of the **NIRC** provides:

SEC. 281. *Prescription for Violations of any Provision of this Code.* - All violations of any provision of this Code shall prescribe after five (5) years.

Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time,

⁵ G.R. No. 259284, 24 January 2024.

from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.

The prescription shall be interrupted when proceedings are instituted against the guilty persons and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy.

The term of prescription shall not run when the offender is absent from the Philippines.

Thus, violations of the NIRC prescribe after five (5) years. As a rule, prescription begins to run from the day of the commission of the violation. It is only when the violation is not known at the time of its commission that prescription is reckoned from its discovery.

In *Tupaz v. Ulep*⁶, the Supreme Court explained when the offense of willful failure to pay deficiency taxes is committed, thus:

Petitioner was charged with failure to pay deficiency income tax after repeated demands by the taxing authority. In *Lim, Sr. vs. Court of Appeals*, we stated that by its nature the violation could only be committed after service of notice and demand for payment of the deficiency taxes upon the taxpayer. Hence, it cannot be said that the offense has been committed as early as 1980, upon filing of the income tax return. This is so because prior to the finality of the assessment, the taxpayer has not committed any violation for nonpayment of the tax. The offense was committed only after the finality of the assessment coupled with taxpayer's willful refusal to pay the taxes within the allotted period. In this case, when the notice of assessment was issued on July 16, 1984, the taxpayer still had thirty (30) days from receipt thereof to protest or question the assessment. Otherwise, the assessment would become final and unappealable. As he did not protest, the assessment became final and unappealable on August 16, 1984. Consequently, when the complaint for preliminary investigation was filed with the Department of Justice on June 8, 1989, the criminal action was instituted within the five (5) year prescriptive period.

⁶ G.R. No. 127777, 01 October 1999, citing *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals and People of the Philippines*, G.R. Nos. L-48134-37, 18 October 1990.

(Emphasis and underscoring supplied.)

The same principle was applied by this Court in *People of the Philippines v. Cosco Petroleum Company, Inc., et al.*⁷, where it held:

In the instant case, since, by the nature of the violation charged against the accused (i.e., willful refusal to pay taxes despite demand), the day of the commission of the violation when the prescriptive period begins to run is upon the finality of the assessment coupled with taxpayer's willful refusal to pay the taxes within the allotted period.

(Emphasis and underscoring supplied.)

Accordingly, in determining whether the present charge has prescribed, the Court must ascertain when the assessment became final and that **Tan** thereafter failed or refused to pay the deficiency taxes within the period allowed.

The *Information* expressly alleges that **Tan** committed the offense "[o]n or about the 5th day of February 2021, and subsequently thereafter." Taken on its face, the five-year prescriptive period from the date alleged therein would have already expired on 05 February 2026, which is before the filing of the *Joint Complaint-Affidavit* on 13 April 2026.

The evidence submitted by the prosecution, however, shows that the offense could not yet have been committed on 05 February 2021.

The **FLD/FAN**, although dated 05 February 2021, were received by **Tan's** authorized representative on 09 February 2021. Further, the records do not show that **Tan** filed a protest against the **FLD/FAN** within the prescribed period.

Under Revenue Regulations No. 18-2013, a taxpayer may administratively protest the **FLD/FAN** within thirty (30) days from receipt thereof. If the taxpayer fails to file a valid protest within such period, the assessment becomes final, executory,

⁷ CTA Crim. Case No. O-805, 20 January 2025.

and demandable.⁸ Nevertheless, the Court notes that the FLD itself expressly required **Tan** to pay the assessed deficiency taxes on or before 19 March 2021.⁹

Thus, even assuming in favor of the prosecution that the commission of the offense should be reckoned only after the expiration of this later payment deadline, **Tan's** alleged willful failure to pay could have arisen no later than upon his failure to pay after 19 March 2021.

Consequently, even under the reckoning most favorable to the prosecution, the five-year prescriptive period had already elapsed by 20 March 2026.

The *Joint Complaint-Affidavit* was filed only on 13 April 2026, *after* the five-year prescriptive period had already expired. Subsequently, the *Information* dated 29 June 2026 was filed before this Court on 12 August 2026.

Thus, whether reckoned from the institution of the preliminary investigation on 13 April 2026 or the filing of the *Information* on 12 August 2026, the five-year prescriptive period had already elapsed.

The subsequent collection measures undertaken by the Bureau of Internal Revenue ("**BIR**") do not alter this conclusion. The records show that the **WDL** was subsequently issued on 24 September 2021, and **WoGs** were thereafter issued to enforce collection of the same deficiency taxes. These collection measures pertain to the same deficiency assessments and did not give rise to a new Section 255 offense each time the **BIR** sought to collect the outstanding liabilities.

⁸ Revenue Regulations No. 18-2013, Sec. 3.1.4, amending Revenue Regulations No. 12-99. The pertinent provision states that if the taxpayer fails to file a valid protest against the FLD/FAN within thirty (30) days from date of receipt thereof, "the assessment shall become final, executory and demandable."

⁹ *Supra*, Page 2, Annex "**K**" – Formal Letter of Demand dated 05 February 2021.

In *Cosco Petroleum*, notwithstanding subsequent collection notices, a warrant of distraint and/or levy, and a later final demand before suit, this Court reckoned the commission of the Section 255 violation from the finality of the assessment coupled with the taxpayer's willful refusal to pay within the allotted period.¹⁰ The subsequent pursuit of administrative collection remedies did not operate to reset the date of commission of the offense for purposes of prescription.

Neither can the words "*and subsequently thereafter*" in the *Information* operate to render the offense indefinitely continuing for purposes of Section 281.¹¹

The continued nonpayment of the same deficiency tax liabilities cannot perpetually renew the offense and restart the five-year period. Otherwise, the statutory period of prescription would effectively never commence for so long as the assessed deficiency taxes remain unpaid, thereby rendering the five-year limitation under Section 281 nugatory.

The discovery rule under Section 281 likewise does not alter the reckoning of prescription.

In *People v. Consebido*,¹² the Supreme Court explained that when the commission of a tax violation is known, the prescriptive period begins to run from the date of its commission. The alternative reckoning from discovery applies when the violation was not known at the time of its commission.

Here, the alleged offense consists of **Tan's** failure to pay deficiency taxes which the **BIR** itself assessed and demanded. Having issued and served the **FLD/FAN** and fixed the period within which payment was required, the **BIR** was necessarily aware whether the deficiency taxes remained unpaid after such period.

¹⁰ *Supra*.

¹¹ **Sec. 281**. *Prescription for Violations of any Provision of [the NIRC]*.

¹² G.R. No. 258563, 02 April 2025.

Indeed, the records show that on 01 July 2021, a *Memorandum* was issued stating that the subject assessments had become final and demandable and requesting the institution of collection proceedings.¹³ Thereafter, the **BIR** issued the **WDL** and pursued further collection remedies against **Tan**. These circumstances demonstrate that the alleged violation was known to the taxing authority and could not be treated as one discovered only at some later date for purposes of Section 281.

The records likewise contain no showing that **Tan** was absent from the Philippines during any portion of the relevant period so as to prevent prescription from running pursuant to the last paragraph of Section 281.

Consequently, whether the five-year period is reckoned from 05 February 2021, as alleged in the *Information*, or, more favorably to the prosecution, from the expiration of the payment period on 19 March 2021, the offense had already prescribed before proceedings were instituted against **Tan** on 13 April 2026. *A fortiori*, the offense had already prescribed when the *Information* dated 29 June 2026 was filed before this Court on 12 August 2026.

The institution of proceedings could no longer interrupt a prescriptive period which had already completely elapsed. By then, the offense charged had already been extinguished by prescription.

Under Rule 9, Section 4 of the Revised Rules of the Court of Tax Appeals ("**RRCTA**"), the Court is required to evaluate the *Resolution* of the public prosecutor and its supporting evidence. The same provision authorizes the Court to immediately dismiss the case if the evidence on record clearly fails to establish probable cause.¹⁴

¹³ *Supra*, Annex "**N**" - *Memorandum* dated 01 July 2021.

¹⁴ **RRCTA**, Rule 9, Sec. 4. *Warrant of arrest*. — Within ten days from the filing of the information, the Division of the Court to which the case was raffled shall evaluate the resolution of the public prosecutor and its supporting evidence. The Division may immediately dismiss the case if it finds that the evidence on record clearly fails to establish probable cause.

Upon personal evaluation of the *Information*, the *Resolution* of the public prosecutor, and the supporting evidence submitted by the Plaintiff, the Court finds that the evidence on record shows that the offense charged has already prescribed before proceedings were instituted against **Tan**. Accordingly, probable cause is wanting and the case must be dismissed.

WHEREFORE, premises considered, the instant case against accused, **EDUARDO YU TAN** for violation of Section 255 of the **NIRC**, as amended, is hereby **DISMISSED** on the ground that the offense charged has already prescribed pursuant to Section 281 of the same law.

SO ORDERED.


JEAN MARIE A. BACORRO-VILLENA
Associate Justice

(On Leave)
LANEE S. CUI-DAVID
Associate Justice


PAOLO S. TESTON
Associate Justice