22-000653-0048

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 11048

SUPPLY OILFIELD & MARINE PERSONNEL SERVICES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF DECISION

To:

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

ATTY. ALBERT C. ARPON
ATTY. CARL FITRI A. HUSSIN
ATTY. MELIZA VICTORIA C. ARIAS
Bureau of Internal Revenue
Legal Division, Revenue Region No.8A
36th Floor, Export Bank Plaza Bldg.
Sen. Gil Puyat Avenue corner Chino Roces Avenue
Makati City

CABRERA & COMPANY
28th Floor, AIA Tower (formerly Philamlife Tower)
8767 Paseo de Roxas
1226 Makati City

GREETINGS:

You are hereby notified by these presents that on **December 17, 2025,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **December 22, 2025.**

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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
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SUPPLY OILFIELD & MARINE PERSONNEL SERVICES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 11048

Members:

BACORRO-VILLENA, *Acting Chairperson, and*
CUI-DAVID, JJ.

Promulgated:

DEC 17 2025, 3:10PM

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DECISION

CUI-DAVID, J.:

In this *Petition for Review* filed on December 22, 2022, petitioner Supply Oilfield & Marine Personnel Services, Inc. (Petitioner) prays that judgment be rendered ordering the cancellation of the deficiency tax assessments issued against it for taxable year (TY) 2018, in the aggregate amount of ₱54,952,279.87, inclusive of surcharges, interest, and penalties.[1]

THE PARTIES

Petitioner, doing business under the trade name "Newrest Somps," is a corporation duly organized and existing under Philippine law, with its principal place of business at 19th Floor, Pearlbank Centre, 146 Valero Street, Salcedo Village, Makati City 1227. It is established primarily to engage in the business of contracting, enlisting, and recruiting seamen, vessel crews, and workers, both skilled and unskilled, for local/overseas work, and to act as agents of individuals or

[1] Docket – Vol. I, pp. 6-26.

firms in the supply of manpower.[2] It is registered with the Bureau of Internal Revenue (BIR), Revenue District Office No. 50, with Taxpayer Identification Number (TIN) 215-170-490-000.[3]

Respondent, the Commissioner of Internal Revenue (Respondent), is sued in his official capacity, having been duly appointed and empowered to perform the duties of his office including, among others, the duty to act on and approve claims for refund and/or tax credits, investigate books of accounts and other accounting records of taxpayers, as well as assess deficiency taxes as provided by law.[4] He may be served with summons, notices, and court processes at the Legal Division of Revenue Region No. 8A – Makati located at the 36th Floor, Export Bank Plaza Bldg., Sen. Gil Puyat Ave., corner Chino Roces, Makati City.[5]

THE FACTS AND THE PROCEEDINGS

On May 23, 2019, respondent issued *Letter of Authority* (LOA) No. eLA 201600038092,[6] authorizing Revenue Officer (RO) Geo Kristoff T. Marcos and Group Supervisor (GS) Marife P. Mactal of RDO No. 50 – South Makati to examine petitioner's books of accounts and other accounting records for all internal revenue taxes, covering January 1, 2018 to December 31, 2018.[7]

On September 16, 2021, respondent issued a *Preliminary Assessment Notice* (PAN) consisting of Part I and Part II, with attached *Details of Discrepancies*, assessing petitioner for deficiency income tax (IT), value-added tax (VAT), expanded withholding tax (EWT), final withholding tax (FWT), final withholding VAT (FWVAT), documentary stamp tax (DST), and improperly accumulated earnings tax (IAET), in the aggregate amount of ₱68,883,907.83, including surcharges and interest.[8]

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[2] Exhibits "P-3" and "P-3-1", USB (Exhibit "P-36-1").
[3] Par. 1.c, Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. I, p. 492.
[4] Par. 1.a, Stipulation of Facts, JSFI, Docket – Vol. I, p. 491.
[5] Par. 6, *Answer*, Division Docket, p. 204.
[6] Exhibit "R-1", BIR Records, p. 3.
[7] Par. 1.d, Stipulation of Facts, JSFI, Docket – Vol. I, p. 492.
[8] Exhibits "R-4" and "R-4-1", BIR Records, pp. 696 to 704.

On October 26, 2021, respondent issued and served to petitioner the Formal Letter of Demand/Final Assessment Notice (FLD/FAN) consisting of Part I and Part II, with attached *Details of Discrepancies*,[9] assessing petitioner of deficiency IT, VAT, EWT, FWT, FWVAT, DST, IAET, and compromise penalties, in the aggregate amount of ₱69,080,122.41, inclusive of interests.[10]

On November 24, 2021, petitioner filed a *Protest to Formal Letter of Demand and Request for Reinvestigation* of even date against the FLD/FAN.[11]

A year later, or on November 24, 2022, petitioner received the Final Decision on Disputed Assessment (FDDA) dated November 18, 2022, which adjusted the findings from the FLD/FAN after considering petitioner's *Protest* letter.[12]

Not satisfied, petitioner sought recourse before the Court on December 22, 2022, *via* the instant *Petition for Review*.

On March 13, 2023, within the extension period granted by the Court,[13] respondent filed his *Answer*,[14] asserting that the instant *Petition for Review* should be denied for lack of merit. Respondent argued that, as part of administrative due process, the taxpayer must submit relevant documents to refute the tax assessment. Allegedly, petitioner raised numerous claims in its protest to the FLD/FAN but failed to substantiate them with documents submitted to the BIR. Hence, the RO is constrained to arrive at such tax deficiencies given that the documents submitted by petitioner only partially supported its claims.

The *Pre-Trial Conference* was held on September 26, 2023.[15] Prior thereto, *Respondent's Pre-Trial Brief* was filed on September 18, 2023,[16] while petitioner submitted its *Compliance with Submission (Re: Notice of Pre-Trial Conference dated 26 May 2023)* on September 21, 2023,[17] with attached

[9] Exhibits "P-4" to "P-4-8" and Exhibits "R-6", "R-6-3", "R-6-5" to "R-6-12", BIR Records, pp. 793 to 801.
[10] Par. 1.e, Stipulation of Facts, JSFI, Docket – Vol. I, p. 492.
[11] Par. 1.g, Stipulation of Facts, JSFI, Docket – Vol. I, p. 493; Exhibit "P-5", Docket – Vol. II, pp. 944 to 960.
[12] Par. 1.f, Stipulation of Facts, JSFI, Docket – Vol. I, p. 493.
[13] Respondent's *Motion for Extension to File Answer* dated February 6, 2023, Docket – Vol. I, pp. 196 to 198; Resolution dated February 16, 2023, Docket – Vol. I, p. 202.
[14] Docket – Vol. I, pp. 203 to 212.
[15] Notice of Pre-Trial Conference dated May 26, 2023, Docket – Vol. I, pp. 299 to 300; Minutes of hearing held on, and Order dated, September 26, 2023, Docket – Vol. I, pp. 483-486.
[16] Docket – Vol. I, pp. 302-310.
[17] Docket – Vol. I, pp. 314 to 317.

Pre-Trial Brief (of Petitioner Supply Oilfield [& Marine] [18] *Personnel Services, Inc.).*[19]

On October 16, 2023, the parties submitted their *Joint Stipulation of Facts and Issues,*[20] which the Court approved in a Resolution dated November 9, 2023.[21] The *Pre-Trial Order*[22] was issued on December 1, 2023.

Trial ensued, during which petitioner presented two witnesses: (1) Mr. Maxencio A. Rios, Jr.,[23] Manager at Isla Lipana & Co., its external tax consultant; and (2) Mr. Joel C. Romano, Jr.,[24] the Court-commissioned Independent Certified Public Accountant.[25]

On March 12, 2024, petitioner filed its *Formal Offer of Evidence.*[26] The Court admitted all of petitioner's offered exhibits in a Resolution[27] promulgated on June 4, 2024.

Respondent presented his lone witness, RO Marcos, who testified on direct examination by way of a Judicial Affidavit.[28]

On June 7, 2024, respondent filed his *Formal Offer of Evidence.*[29] The Court admitted all of respondent's offered exhibits in a Resolution[30] dated September 6, 2024.

On November 7, 2024, the instant case was submitted for decision following the filing of petitioner's *Memorandum*[31] on October 11, 2024, and respondent's *Memorandum*[32] on October 17, 2024.

Hence, this Decision.

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[18] Refer to petitioner's *Manifestation (with Profuse Apologies)* dated June 26, 2024, Docket – Vol. II, pp. 1138 to 1140.
[19] Docket – Vol. I, pp. 318 to 326.
[20] *Id.* at 491 to 503.
[21] *Id.* at 511.
[22] *Id.* at 538-554.
[23] Exhibit "P-10", Docket – Vol. I, pp. 327-335; Minutes of hearing held on, and Order dated, November 29, 2023, Docket – Vol. I, pp. 530-531 and 533-534, respectively.
[24] Exhibit "P-35", Docket – Vol. II, pp. 780-809; Minutes of hearing held on, and Order dated, February 6, 2024, Docket – Vol. II, pp. 810-814.
[25] *Oath of Commission* dated November 29, 2023, Docket – Vol. I, p. 532, Minutes of hearing held on, and Order dated, November 29, 2023, Docket – Vol. I, pp. 530-531 and 533-534.
[26] Docket – Vol. II, pp. 928-943.
[27] *Id.* at 1117-1119.
[28] Exhibit "R-10", Docket – Vol. I, pp. 214-231; Minutes of the hearing held on, and Order dated, June 4, 2024, Docket – Vol. II, pp. 1120-1125.
[29] Docket – Vol. II, pp. 1129-1133.
[30] *Id.* at 1145-1146.
[31] Docket – Vol. II, pp. 1147 to 1179.
[32] *Id.* at 1183-1192.

THE ISSUE

As stipulated by the parties, the lone[33] issue for this Court's resolution is:

> "WHETHER PETITIONER SUPPLY OILFIELD & MARINE PERSONNEL SERVICES, INC. (SOMPS, INC.) IS LIABLE TO PAY THE DEFICIENCY INCOME TAX, VALUE ADDED TAX, EXPANDED WITHHOLDING TAX, FINAL WITHHOLDING TAX, FINAL WITHHOLDING OF VAT, DOCUMENTARY STAMP TAX, IMPROPERLY ACCUMULATED EARNINGS TAX, AND COMPROMISE PENALTY FOR TAXABLE YEAR 2018 IN THE AGGREGATE AMOUNT OF PHP54,952,279.87 PLUS ALL INCREMENTS INCIDENTAL TO THE DELINQUENCY."

Petitioner's Arguments:

Petitioner argues that respondent's right to assess the deficiency VAT, EWT, and FWT had already prescribed; and that even assuming *arguendo* that respondent's power to assess has not prescribed, his assessments should still fail for being without basis in fact and in law.

Respondent's Arguments:

Respondent on the other hand submits that the final assessment notices were issued within the allowed prescriptive period, pursuant to Sections 203 and 223 of the National Internal Revenue Code (NIRC) of 1997, as amended, in relation to Revenue Memorandum Circular (RMC) No. 34-2020, Revenue Regulations (RR) No. 10-2020, RR No. 11-2020, RMC Nos. 74-2020, 136-2020, 52-2021, 80-2021, and 93-2021.

THE COURT'S RULING

The Court has jurisdiction over the present case.

Before addressing the substantive issues, the Court must first determine the timeliness of the filing of the present *Petition for Review* pursuant to Section 228 of the NIRC of 1997, as amended, which provides:

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[33] Stipulation of Issue, JSFI, Docket – Vol. I, p. 493.

> SEC. 228. *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, That a preassessment notice shall not be required in the following cases:
>
> ....
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> **If the protest is denied in whole or in part**, or is not acted upon within one hundred eighty (180) days from submission of documents, **the taxpayer adversely affected by the decision** or inaction **may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision**, or from the lapse of the one hundred eighty (180)-day period; **otherwise, the decision shall become final, executory and demandable**." (*Boldfacing supplied*)

From the foregoing, a taxpayer is granted **thirty (30) days** from receipt of the FLD/FAN to file an administrative protest, and thereafter **thirty (30) days** from receipt of the Commissioner's decision on the protest, or from the expiration of the 180-day period to act on the protest, to file a *Petition for Review* with this Court.

In this case, petitioner received respondent's FDDA on November 24, 2022. Counting thirty (30) days therefrom, petitioner had until December 24, 2022, to appeal the FDDA to the Court.

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The *Petition for Review* was filed on December 22, 2022, well within the thirty (30)-day reglementary period. Accordingly, the Court validly acquired jurisdiction over the present case.

The Court now proceeds to resolve the case on the merits.

Respondent's right to assess portions of the subject deficiency VAT, EWT, and FWT is not barred by prescription.

Petitioner argues that respondent's right to assess alleged deficiency VAT, EWT, and FWT has prescribed under the NIRC of 1997, as amended, based on the following arguments:

1) The assessments for the 1st to 3rd quarters of VAT and for the months of January to August for both EWT and FWT are void for having been issued beyond the three (3)-year prescriptive period;

2) Petitioner's case does not fall under any of the exceptions to the three (3)-year prescriptive period; and

3) Respondent's unilateral suspension of the statute of limitations or prescriptive period for assessment and collection of taxes is void for having no basis in law.

Citing Section 203 of the NIRC of 1997, petitioner maintains that respondent has three (3) years within which to assess and collect deficiency internal revenue taxes, counted from the last day prescribed by law for the filing of the tax return, or from the day the return was actually filed, if the filing was made after the expiration of such period.

According to petitioner, considering that it received the FLD/FAN only on October 26, 2021, a significant portion of the assessment had already prescribed.

Petitioner further argues that, for VAT purposes, Section 114 of the NIRC of 1997, as amended, specifies the last day prescribed by law for filing qarterly VAT returns. Citing *Lapanday Foods Corporation v. Commissioner of Internal Revenue*,[34] petitioner states that the Supreme Court ruled that the three-year prescriptive period for issuing a deficiency VAT assessment begins either on the last day of the twenty-five (25)-day period from the close of the taxable quarter within which to file the quarterly VAT return, or the actual date of filing of the quarterly VAT return, whichever is later.

For TY 2018, petitioner provides the following illustration:[35]

Quarter	**Last Day to File Return**	**Date of Actual Filing**	**Last Day to Assess**	**Date of Receipt of FLD/FAN**	**Period Lapsed**
1st	Apr. 25, 2018	Apr. 24, 2018	Apr. 25, 2021	Oct. 26, 2021	3 years, 6 months, 1 day
2nd	July 25, 2018	July 23, 2018	July 25, 2021		3 years, 3 months, 1 day
3rd	Oct. 25, 2018	Oct. 20, 2018	Oct. 25, 2021		3 years, 1 day

Petitioner submits that respondent's right to assess deficiency VAT for the 1st to 3rd quarters of TY 2018 expired on October 25, 2021. Since it received the FLD/FAN only on October 26, 2021, it argues that respondent's right to assess had already prescribed.

Similarly, petitioner provides the following illustration for EWT and FWT assessments:[36]

Month	**Last Day to File Return**	**Date of Actual Filing**	**Last Day to Assess**	**Date of Receipt of FLD**	**Period Lapsed**
January	Feb. 12, 2018	Feb. 13, 2018	Feb. 13, 2021	Oct. 26, 2021	3 years, 8 months, 13 days
February	Mar. 12, 2018	Mar. 12, 2018	Mar. 12, 2021		3 years, 7 months, 14 days
March	Apr. 10, 2018	Apr. 10, 2018	Apr. 10, 2021		3 years, 6 months, 16 days
April	May 10, 2018	May 9, 2018	May 10, 2021		3 years, 5 months, 16 days
May	June 11, 2018	June 8, 2018	June 11, 2021		3 years, 4 months, 18 days
June	July 31, 2018	July 10, 2018	July 31, 2021		3 years, 2 months, 13 days

[34] G.R. No. 186155, January 17, 2023.
[35] Par. 27, Petitioner's *Memorandum*, Docket – Vol. II, pp. 1153-1154.
[36] Par. 30, Petitioner's *Memorandum*, Docket – Vol. II, pp. 1154-1155.

July	Aug. 10, 2018	Aug. 13, 2018	Aug. 13, 2021		3 years, 2 months, 13 days
August	Sept. 10, 2018	Sept. 10, 2018	Sept. 10, 2021		3 years, 1 month, 16 days

On this basis, petitioner contends that the assessments for the 1st to 3rd quarters for VAT, and for the months of January to August for both EWT and FWT had already prescribed.

Hence, petitioner argues that these assessments are void for having been issued beyond the three (3)-year prescriptive period for assessing deficiency taxes.

Petitioner further contends that its case does not fall under any of the exceptions to the three (3)-year prescriptive period under Section 222 of the NIRC of 1997, as amended, namely: (1) false or fraudulent return with intent to evade tax; (2) failure to file a return; and (3) execution of a valid agreement between the taxpayer and the Commissioner extending the period of assessment.

Allegedly, in the present case, there was no agreement to extend the period of assessment, nor was there any waiver of the defense of prescription executed by petitioner and respondent. Anent the exception on false or fraudulent returns, petitioner avers that a perusal of the notices issued by respondent reveals no allegation that petitioner filed a false return.

Finally, petitioner maintains that respondent's unilateral suspension of the prescriptive period for the assessment and collection of taxes is void for having no basis in law. Petitioner posits that the BIR issuances during the COVID-19 pandemic extending the statute of limitations by 345 days, constitute an invalid unilateral suspension of the prescriptive period.

Petitioner insists that Congress, through legislation, defines the parameters for the suspension of the statute of limitations for the assessment and collection of taxes. It cites Section 223 of the NIRC of 1997, as amended, which provides that the statute of limitations "shall be suspended for the period during which the Commissioner is prohibited from making the assessment." Petitioner adds that, under existing law and jurisprudence, the "prohibitions" contemplated under this provision are those brought about by judicial processes based on legislation that prohibits the BIR from making assessments.

Petitioner further insists that while the BIR anchored the suspension of the statute of limitations on Section 223 of the NIRC of 1997, as amended, and on Republic Act (RA) No. 11469, otherwise known as the "Bayanihan to Heal as One Act,"[37] nothing in the said law provides that a state of public health emergency suspends the assessment or collection of taxes.

Petitioner points out that despite the absence of any explicit prohibition in RA No. 11469, respondent nevertheless claimed that the law barred him and/or his authorized representatives from assessing and collecting taxes. For petitioner, respondent unilaterally arrogated unto himself the power to suspend the prescriptive period for the assessment and collection of taxes, an authority that belongs exclusively to Congress.

On the other hand, in rejecting petitioner's position, respondent counters that the burden of proving the reckoning point and the lapse of the applicable prescriptive period lies with petitioner, who alleges that the assessment has prescribed.

According to respondent, pursuant to 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, was effectively extended by the number of days covered by the Enhanced Community Quarantine (ECQ) and Modified ECQ (MECQ) declarations, totaling 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)**

[37] 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 DECIDED NATIONAL POLICY AND FOR OTHER PURPOSES.

Mar. 16, 2020 to May 31, 2020	77	60	137	Mar. 16, 2020 to July 30, 2020
Aug. 4, 2020 to August 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	

Respondent submits that the last day of the prescriptive period, after considering the suspensions brought about by the declarations of ECQ/MECQ, shall 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

Respondent claims that since the original three (3)-year prescriptive period in the present case was extended by 420 days pursuant to Sections 203 and 223 of the NIRC of 1997, as amended, in relation to RMC Nos. 34-2020, 74-2020, 136-2020, 52-2021, 80-2021, 93-2021, and RR Nos. 10-2020 and 11-2020, the FLD/FAN was therefore issued to petitioner within the extended prescriptive period.

The Court agrees with respondent.

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

> SEC. 203. *Period of Limitation upon Assessment and Collection.* — **Except as provided in Section 222, 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, it is clear that, except as provided in Section 222 of the NIRC of 1997, as amended, the government must assess internal revenue taxes within three (3) years from the last day prescribed by law for the filing of the tax return, or from the actual date of filing, whichever comes later.[38] Corollarily, an assessment notice issued beyond the three (3)-year prescriptive period is invalid and ineffective.[39]

In relation thereto, Section 114(A) of the NIRC of 1997, as amended, reads:

> "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: xxx" *(Emphasis added)*

From this provision, petitioner's Quarterly VAT Returns for the 1st to 3rd quarters of TY 2018 should have been filed on or before: (1) April 25, 2018, for the 1st quarter; (2) July 25, 2018, for the 2nd quarter; and (3) October 25, 2018 for the 3rd quarter.

Moreover, Section 58(A) of the NIRC of 1997, as amended, reads:

> "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)*

Accordingly, petitioner's EWT and FWT returns for the 1st to 2nd quarters of TY 2018 should have been filed on or before: (1) April 30, 2018, for the 1st quarter; and (2) July 30, 2018, for the 2nd quarter.

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[38] Refer to *Commissioner of Internal Revenue v. Kudos Metal Corporation*, G.R. No. 178087, May 5, 2010.
[39] *Commissioner of Internal Revenue v. Next Mobile, Inc.*, G.R. No. 212825, December 7, 2015.

In connection therewith, RMC No. 27-2018, issued on April 16, 2018,[40] states that electronic Filing and Payment System (*e*FPS) filers shall use the new returns in filing and remitting creditable income taxes withheld (expanded)/final income taxes withheld for the quarter. In case *e*FPS filers have already remitted the creditable/final income taxes withheld for the third month using BIR Form No. 0605, the old return (BIR Form No. 1601-E/1601F), or the new remittance form under BIR Form No. 0619-E/0619-F once available, taxpayers still need to file the quarterly return (BIR Form No. 1601-EQ/1601-FQ) reflecting the total amount of taxes remitted, thus:

> "5. In case of system down or the returns are not available in the *e*FPS filers account, *e*FPS filers shall still use BIR Form No. 0605 or the new remittance form under BIR Form No. 0619-E/0619-F once available, in filing and remitting the creditable taxes withheld (expanded)/final income taxes withheld for the month.
>
> 6. Once the returns become available in *e*FPS, the *e*FPS filers shall file the return (BIR Form No. 1601-EQ/1601-FQ) and indicate the total amount/taxes remitted for the quarter."

Based on the evidence presented, petitioner is an eFPS filer and filed its 2018 returns on the following dates:

VAT		
Quarter	**Exhibit**[41]	**Date of Actual Filing of Return**
1st	"P-17-c"	April 24, 2018
2nd	"P-17-f"	July 23, 2018
3rd	"P-17-I"	October 20, 2018
4th	"P-17-l"	January 23, 2019

EWT		
Quarter	**Exhibit**[42]	**Date of Actual Filing of Return**
1st	(N/A)	(N/A)
2nd	"P-18-f"	July 10, 2018
3rd	"P-18-I"	October 9, 2018
4th	"P-18-l"	January 8, 2019

FWT		
Quarter	**Exhibit**[43]	**Date of Actual Filing of Return**
1st	(N/A)	(N/A)

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[40] SUBJECT: Circularizing New and Revised BIR Forms Affected by Tax Reform for Acceleration and Inclusion (TRAIN) Law.
[41] USB (Exhibit "P-36-1").
[42] *Id.*
[43] *Id.*

x--x

2nd	"P-19-f"	July 10, 2018
3rd	"P-19-I"	October 9, 2018
4th	"P-19-l"	January 8, 2019

Correspondingly, for purposes of the subject tax assessments of deficiency VAT, EWT, and FWT for TY 2018, the end of the three (3)-year prescriptive period under Section 203 of the NIRC of 1997, as amended, is determined as follows:

Kind of Tax & Period	**Reckoning date of the three (3)-year prescriptive period**[44]	**End of the three (3)-year prescriptive period**
VAT – 1st Quarter 2018	Apr. 25, 2018	Apr. 25, 2021
VAT – 2nd Quarter 2018	July 25, 2018	July 25, 2021
VAT – 3rd Quarter 2018	Oct. 25, 2018	Oct. 25, 2021
EWT – 1st Quarter 2018	-	-
EWT – 2nd Quarter 2018	July 31, 2018	July 31, 2021
FWT – 1st Quarter 2018	-	-
FWT – 2nd Quarter 2018	July 31, 2018	July 31, 2021

Notably, petitioner only offered in evidence its BIR Forms No. 0605 showing the payment of EWT and FWT for the months of January to March 2018 into evidence.[45] However, as stated earlier, under RMC No. 27-2018, petitioner should still have filed the new quarterly returns (BIR Form No. 1601-EQ/1601-FQ) when these became available. In the absence of the proper returns, the Court cannot determine whether respondent's right to assess petitioner for deficiency EWT and FWT for the 1st quarter of TY 2018 is barred by prescription.

In this case, the FLD/FAN was issued on October 26, 2021,[46] beyond the three (3)-year prescriptive period to assess for VAT (1st to 3rd quarters of TY 2018), and for EWT and FWT (2nd quarter of TY 2018). However, pursuant to Section 4(z) of RA No. 11469, the statutory deadlines and timelines 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

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[44] The last day prescribed by law for the filing of the tax return or actual date of filing the same, whichever comes later.
[45] Exhibits "P-18-a", "P-18-b", "P-18-c", and "P-19-a", "P-19-b", "P-19-c" (USB, Exhibit "P-36-1").
[46] Exhibits "P-4" to "P-4-8", and Exhibits "R-6", "R-6-3", "R-6-5" to "R-6-12", BIR Records, pp. 793-801.

> (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)*

To recall, petitioner contends that respondent unilaterally arrogated unto himself the power to suspend the prescriptive period for the assessment and collection of taxes, a function that belongs exclusively to the legislature.

Relevant to this discussion is Section 244 of the NIRC of 1997, as amended, to wit:

> "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,* in *La Suerte Cigar & Cigarette Factory v. Court of Appeals*,[47] confirmed the authority of the Secretary of Finance to promulgate rules and regulations for the effective enforcement of the NIRC of 1997, as amended, *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:

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

> **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 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 promulgate rules and regulations necessary for the effective implementation of our tax laws.

To implement Section 4(z) of RA No. 11469, the BIR issued several RRs/RMCs with respect to the suspension of the running of the statute of limitations for tax assessments under Sections 203 and 222, pursuant to Section 223 of the NIRC of 1997, as amended,[48] among them:

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[48] "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

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"
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

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)*

		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 further extend the period of statutory deadlines set by the Secretary of Finance in RR No. 7-2020 (which includes suspension of the running of prescription under Sections 203 and 222 pursuant to Section 223), 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, based on the foregoing issuances, the running of the statute of limitations under Sections 203 and 222, pursuant to Section 223 of the NIRC of 1997, as amended, was validly suspended beginning March 16, 2020, and for sixty (60) days after the lifting of the quarantine. RR Nos. 7-2020, 10-2020, and 11-2020 specifically provide that statutory deadlines for the submission of *assessment notices* are suspended during the emergency period beginning on March 16, 2020.

From May 1 to 15, 2020, the Inter-Agency Task Force (IATF) for the Management of Emerging Infectious Diseases placed the National Capital Region (NCR) under **ECQ**.[49] On May 15, 2020, IATF Resolution No. 37 was issued, placing all Highly Urbanized Cities (HUCs) in the NCR and the Municipality of Pateros under **MECQ** until May 31, 2020, without prejudice to the declaration of localized ECQ in critical areas. All HUCs of the NCR and the Municipality of Pateros were then placed under General Community Quarantine (GCQ) beginning June 1, 2020.[50]

Subsequently, on August 3, 2020, NCR was again placed under MECQ from August 4 to 18, 2020.[51] The IATF then placed NCR under ECQ from March 29 to April 11, 2021;[52] under MECQ from April 12 to May 14, 2021;[53] under ECQ from August 6 to 20, 2021;[54] and under MECQ from August 21 to September 15, 2021.[55]

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

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[49] IATF Resolution Nos. 28 and 29 dated April 23, 2020 and April 27, 2020, respectively.
[50] IATF Resolution No. 41 dated May 29, 2020.
[51] Memorandum from the Executive Secretary dated August 3, 2020.
[52] IATF Resolution Nos. 107-A and 108-A dated March 29, 2021 and April 4, 2021, respectively.
[53] IATF Resolution Nos. 109-A and 113-A dated April 10, 2021 and April 29, 2021, respectively.
[54] IATF Resolution No. 130-A, dated July 29, 2021.
[55] IATF Resolution Nos. 134, 135-A, and 137, dated August 19, 2021, August 26, 2021, and September 7, 2021, respectively.

Moreover, RMC No. 93-2021 reiterates that the running of the statute of limitations for assessment and collection of deficiency taxes is suspended in affected jurisdictions while ECQ and/or MECQ is in effect, including any extension/s thereof, and for sixty (60) days thereafter; and that the suspension of the running of the statute of limitations applies to the issuance and service of assessment notices, warrants and the enforcement and/or collection of deficiency taxes.

Hence, as illustrated above by respondent, a total of 420 days was added to the original prescriptive period. Accordingly, the end of the BIR's right to assess was extended as follows:

Kind of Tax & Period	**Reckoning date of the three-year prescriptive period**	**Original prescriptive period**	**Extended prescriptive period**
VAT – 1st Quarter 2018	April 25, 2018	April 25, 2021	June 19, 2022
VAT – 2nd Quarter 2018	July 25, 2018	July 25, 2021	September 18, 2022
VAT – 3rd Quarter 2018	October 25, 2018	October 25, 2021	December 19, 2022
EWT – 1st Quarter 2018	-	-	-
EWT – 2nd Quarter 2018	July 31, 2018	July 31, 2021	September 24, 2022
FWT – 1st Quarter 2018	-	-	-
FWT – 2nd Quarter 2018	July 31, 2018	July 31, 2021	September 24, 2022

In the present case, the FLD/FAN was issued on October 26, 2021, well within the extended prescriptive period.

Petitioner is partially liable for the subject tax assessments.

Respondent issued the FLD[56] with attached *Details of Discrepancy,*[57] and *Assessment Notices*[58] dated October 26, 2021, assessing petitioner for deficiency IT, VAT, EWT, FWT, FWVAT, DST, IAET, and compromise penalty for TY 2018, in aggregate amount of ₱69,080,122.41, inclusive of increments, as summarized below:

[56] Exhibit "R-6", BIR Records, pp. 790 to 793.
[57] Exhibit "R-6-3", BIR Records, pp. 782 to 789.
[58] Exhibits "R-6-5" to "R-6-12", BIR Records, pp. 794 to 801.

Tax Type	Basic	Surcharge	Interest	Total
Income Tax	₱ 27,254,032.51	₱ -	₱ 8,592,860.44	₱ 35,846,892.95
VAT	15,729,413.13	-	5,372,995.15	21,102,408.28
EWT	540,375.38	-	183,520.36	723,895.74
FWT	986,042.79	-	334,876.34	1,320,919.13
FWVAT	471,343.97	-	163,330.37	634,674.34
DST	56,173.00	14,043.25	19,557.44	89,773.69
IAET	6,310,058.46	1,577,514.62	1,418,985.20	9,306,558.28
Compromise penalty	55,000.00	-	-	55,000.00
Total	**₱51,402,439.24**	**₱1,591,557.87**	**₱16,086,125.30**	**₱69,080,122.41**

On November 24, 2021, petitioner filed a protest to the FLD and requested a reinvestigation.[59]

Thereafter, on November 24, 2022,[60] petitioner received the FDDA dated November 18, 2022,[61] which dropped only the disallowed expenses due to non-substantiation under deficiency income tax and the assessment on unsupported zero-rated sales under deficiency VAT. Nevertheless, respondent ultimately assessed petitioner for deficiency IT, VAT, EWT, FWT, FWVAT, DST, IAET, and a compromise penalty for TY 2018, in the reduced aggregate amount of ₱54,952,279.87, summarized as follows:

Tax Type	Basic	Surcharge	Interest	Total
Income tax	₱ 26,709,823.60	₱ -	₱ 11,793,301.84	₱ 38,503,125.44
VAT	2,228,272.53	-	1,042,465.25	3,270,737.78
EWT	540,375.38	-	251,740.90	792,116.28
FWT	986,042.79	-	453,849.83	1,439,892.62
FWVAT	471,343.97	-	220,201.57	691,545.54
DST	56,173.00	14,043.25	26,464.41	96,680.66
IAET	6,310,058.46	1,577,514.62	2,215,608.47	10,103,181.55
Compromise penalty	55,000.00	-	-	55,000.00
Total	**₱37,357,089.73**	**₱1,591,557.87**	**₱16,003,632.27**	**₱54,952,279.87**

I. Deficiency Income Tax (IT)

Respondent assessed petitioner for a deficiency income tax amounting to ₱38,503,125.44, inclusive of increments, computed as follows:[62]

[59] Exhibit "P-5", Docket – Vol. II, pp. 944 to 960.
[60] Par. 1.f, Stipulation of Facts, JSFI, Docket – Vol. I, p. 493; Exhibit "R-9-2", BIR Records, p. 896.
[61] Exhibit "R-9", BIR Records, pp. 893 to 895.
[62] Exhibit "R-9", BIR Records, at p. 895.

Taxable [income] per return		₱64,602,918.00
Add: Discrepancies per reinvestigation		
Undeclared income	₱28,241,636.45	
Undeclared income based on the NGH Agreement	55,888,792.00	
Disallowed expenses due to non-withholding	4,902,316.60	89,032,745.05
Taxable income per reinvestigation		₱153,635,663.05
Income tax due		₱ 46,090,699.00
Less: Total tax credits/payments, net of carry over		19,380,875.40
Basic tax due		₱ 26,709,823.60
Add: 12% Interest (04.16.19 to 12.19.22)		11,793,301.84
TOTAL AMOUNT DUE		₱ 38,503,125.44

a. Undeclared Income - ₱28,241,636.45

Respondent compared the sales reported in petitioner's VAT Returns with those declared in its Annual Income Tax Return (ITR), including reconciliations of Trade Receivables disclosed under declaration of sales. This comparison revealed a discrepancy of ₱28,241,636.45, representing undeclared income. Hence, respondent assessed petitioner for this undeclared income pursuant to Section 32 of the NIRC of 1997, as amended, as follows:[63]

Receipts per VAT Returns	₱112,509,505.16
Add: Trade Receivable, end (₱101,418,664.00/1.12)	90,552,378.57
Subtotal	₱203,061,883.73
Less: Trade Receivable, beg (₱61,082,716.00/1.12)	54,538,139.29
Receipts per Investigation	₱148,523,744.45
Less: Receipts per ITR	120,282,108.00
Undeclared Income	**₱28,241,636.45**

Petitioner argues that not all trade receivables reported in its Balance Sheet represent income, claiming that these include reimbursements of expenses it incurred on behalf of its clients. According to petitioner, these reimbursements pertain to costs that should be incurred by foreign employers in hiring Filipino workers, such as airfare, visa fees, training, medical, and other pre-employment expenses, but were initially paid by petitioner. As such, petitioner asserts that the reimbursements it received merely constitute a return of

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[63] Schedule 1, Exhibit "R-6-3", BIR Records, p. 789.

capital, not a gain or profit, and therefore do not form part of taxable income.[64]

To prove that the Trade Receivables[65] reported in its Balance Sheet includes reimbursement of pre-employment expenses on behalf of its foreign clients, petitioner submitted Schedules of Trade and Non-trade Receivables, beginning[66] and ending.[67]

However, a review of the submitted Schedules of Trade and Non-trade Receivables, beginning (*Aging of Trade Receivables as of 31 December 2017*)[68] and ending (*Aging of Trade Receivables as of 31 December 2018*),[69] shows that they merely present a breakdown of the Trade Receivable balance. The alleged reimbursements cannot be specifically traced or identified therein. Moreover, the accuracy and reliability of these schedules cannot be confirmed due to insufficient supporting documentation. Consequently, petitioner failed to prove the existence of the claimed reimbursements.

Accordingly, the undeclared income amounting to ₱28,241,636.45 is sustained.

b. Undeclared Income based on NGH Agreement - ₱55,888,792.00

Respondent's comparison of the recomputed sales based on the Newrest Group Holdings S.L. (NGH) Agreement as against petitioner's ITR, disclosed under declaration of sales amounting to ₱55,888,792.00, resulting in undeclared income. Hence, petitioner was assessed pursuant to Section 32 of the NIRC of 1997, as amended, as follows:[70]

Recomputation of sales based on NGH Agreement (₱1,761,709.00/1%)	₱176,170,900.00
Less: Receipts per ITR	120,282,108.00
Undeclared Income based on NGH Agreement	**₱55,888,792.00**

[64] Pars. 19 to 22, *Petition for Review*, Docket – Vol. I, pp. 11 to 12; Pars. 68, 71 to 74, Petitioner's *Memorandum*, Docket – Vol. II, pp. 1163 to 1164.
[65] Note 3, Exhibit "P-15", USB (Exhibit "P-36-1").
[66] Exhibit "P-27", USB (Exhibit "P-36-1").
[67] Exhibit "P-28", USB (Exhibit "P-36-1").
[68] Exhibit "P-27", USB (Exhibit "P-36-1").
[69] Exhibit "P-28", USB (Exhibit "P-36-1").
[70] Schedule 2, Exhibit "R-6-3", BIR Records, p. 789.

Based on the findings of the ICPA, the undeclared income of ₱55,888,792.00 was computed by comparing the grossed-up royalty payments to NGH, *vis-à-vis* the declaration made in the ITR.[71]

Petitioner disputes this assessment, arguing that respondent failed to provide any factual or legal basis that supports this conclusion. It asserts that respondent's method or computation is an assessment based on an assumption, not on facts.[72]

Nevertheless, petitioner claims that there was an over-recording of NGH fees amounting to ₱346,625.00; and that, excluding this over-recording of expense, the adjusted Sales should be ₱1,415,084.00.[73]

Petitioner contends that after deducting the alleged over-recording and the 15% withholding tax, and thereafter applying the percentage of sales less the receipts reported in the ITR, it has no undeclared sales or income against which income tax may be assessed, as follows:[74]

Particulars	Amount (in Php)	Remarks
BIR Sales recomputation – NGH Contract		
Transaction reported per 2018 AFS	₱1,761,709	
Less: Over recording of expense	(346,625)	
Grossed up 2018 sales	1,415,084	
Less Withholding tax @15%	(212,263)	Effective 2017, it was agreed by the management to shoulder the withholding for the Partner's fee
2018 Actual Sales	1,202,821	
Divided by: Percentage of Sales (1%)	120,282,100	
Less: Sales per ITR	(120,282,108)	
Undeclared Sales per BIR	-8.00	Due to rounding off

A review of the *Trademark License Agreement* between petitioner and NGH reveals that petitioner is required to pay a royalty fee of 1% of the total sales to NGH, as follows:[75]

[71] Par. I.A.2, Exhibit "P-36", Docket – Vol. II, p. 563.
[72] Par. 25, *Petition for Review*, Docket – Vol. I, p. 12.
[73] Pars. 28 and 29, *Petition for Review*, Docket – Vol. I, p. 13.
[74] Par. 30, *Petition for Review*, Docket – Vol. I, pp. 13-14.
[75] Exhibit "P-22-a", USB (Exhibit "P-36-1").

"**ARTICLE 7: PAYMENT OF ROYALTIES**

7.1 In consideration of the license granted herein, the Licensees agree to pay to the Licensor a royalty fee equal to 1% of the total sales relating to the Business;

In this Agreement the total sales shall mean:

a. the total amount (net only of V.A.T. or similar sales tax) xxx"

The agreement only provides that total sales shall be net of VAT or similar sales tax, but does not address final taxes. Furthermore, petitioner's remark in the reconciliation that it has shouldered withholding taxes since 2017 is unsupported by any agreement or evidence. Thus, the Court cannot confirm petitioner's assertion.

Moreover, the Court is not convinced by petitioner's explanation to cancel the assessment on the ground of an alleged over-recording of expenses, as petitioner did not provide receipts or other evidence to substantiate that such over-recording actually occurred.

Thus, the assessment of undeclared income amounting to ₱55,888,792.00 is upheld.

c. Disallowed Expenses due to Non-withholding - ₱4,902,316.60

Respondent's verification disclosed that petitioner failed to withhold the appropriate withholding taxes due on income payments amounting to ₱4,902,316.60, as enumerated hereunder. Section 34(K) of the NIRC of 1997, as amended, expressly provides that *"[a]ny amount paid or payable which is otherwise deductible from, or taken into account in computing the gross income or for which depreciation or amortization maybe allowed under this Section, shall be allowed as a deduction only if it is shown that the tax required to be deducted and withheld therefrom has been paid to the Bureau of Internal Revenue in accordance with this Section, [Sections 58 and 81] of this Code."* Hence, respondent disallowed the subject expenses pursuant to the above provision, as summarized below:[76]

[76] Schedule 4, Exhibit "R-6-3", BIR Records, p. 788.

Income Payments Subject to EWT	Per ITR/AFS	Per 1601-E	Disallowed Expenses	EWT Rates	EWT Due
Purchase of Services/Contractors					
Crew Related Costs	₱18,793,133.00				
Direct Charges-Others	6,861,288.00				
Communications, Lights, and Water	691,501.00				
Insurance	241,484.00				
Miscellaneous	1,390,607.00				
Repairs & Maintenance-L/L&M	809,955.00				
Representation & Entertainment	423,423.00				
Transportation and travel	39,217.00				
	₱29,250,608.00	₱27,609,867.00	₱1,640,741.00	2%	₱32,814.82
Management and consultancy fees					
Consultancy Fees per ITR	₱4,355,267.00				
Less: Consultancy Fees Subject to FWT	2,940,184.00				
	₱1,415,083.00	-	1,415,083.00	10%	141,508.30
Professional Fees	6,869,615.00	3,209,092.40	3,660,522.60	10%	366,052.26
Subtotal	₱36,120,223.00[77]	₱30,818,959.40	₱6,716,346.60		**₱540,375.38**
Less: Disallowed Expenses due to Non-Substantiation			1,814,030.00		
TOTAL			**₱4,902,316.60**		

Respondent indicated three (3) expense accounts assessed due to non-withholding of taxes, as follows:

Account	Disallowed Expenses/ Income Payments Discrepancy	EWT Rate	EWT Due
1. Purchase of Services/Contractors	₱ 1,640,741.00	2%	₱ 32,814.82
2. Management and consultancy fees	1,415,083.00	10%	141,508.30
3. Professional Fees	3,660,522.60	10%	366,052.26
TOTAL	**₱6,716,346.60**		**₱540,375.38**

c.1. Purchase of Services/Contractors - ₱1,640,741.00

Respondent noted a discrepancy of ₱1,640,741.00 between the purchases of services/contractors account that should have been subjected to 2% EWT and the income payments reported as subjected to 2% EWT in petitioner's BIR Form No. 1601-E.

[77] Actual sum should be ₱37,535,306.00.

Petitioner argues that out of the ₱1,640,741.00 disallowed purchases, ₱1,465,448.85 pertains to payments made to Consolidated Training Systems, Inc. (CTSI), a non-stock, non-profit educational institution, that petitioner engaged to conduct Further Offshore Emergency Training (FOET) and Basic Offshore Safety Induction and Emergency Training (BOSIET) for its crew. Allegedly, the payments of ₱1,465,448.85 to CTSI represent revenues derived in pursuance of CTSI's purpose as an educational institution and are therefore exempt from withholding taxes.[78]

To support its position, petitioner submitted BIR Ruling DA-046-2008 dated January 25, 2008,[79] which states that CTSI, as a non-stock, non-profit educational institution, is exempt from tax on all revenues derived in pursuance of its educational purpose.

However, petitioner failed to present any additional documentary evidence to substantiate that the income payments of ₱1,465,448.85 were indeed made to CTSI. Consequently, the Court cannot verify the existence of these transactions between petitioner and CTSI, which merits respondent's assessment.

With respect to the remaining disallowed expenses under the "Purchase of Services/Contractors" category, petitioner claims that ₱196,138.80 pertains to payments to Aquarich, Inc., its landlord; that in December 2017, Aquarich, Inc. billed it for maintenance dues covering the period of January to March 2018; that it paid the amount in December 2017, and likewise withheld 2% tax at the time of payment; that since the dues were applicable for January to March 2018, the payment was posted as Prepaid Expenses in December 2017; and that subsequently, in 2018, the maintenance expenses were recognized.[80]

However, upon review, the documents submitted by petitioner do not support the alleged payment or the withholding of tax purportedly made in December 2017.

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[78] Pars. 36 and 38, *Petition for Review*, Docket – Vol. I, pp. 14 and 15, respectively.
[79] Exhibit "P-34", Docket – Vol. II, pp. 1075 to 1077.
[80] Pars. 39 and 40, *Petition for Review*, Docket – Vol. I, p. 15.

Moreover, petitioner's explanation does not tally with the disallowed amount of ₱1,640,741.00. According to petitioner, the ₱1,465,448.85 pertains to payments made to CTSI and the ₱196,138.80 to Aquarich, Inc., for a total of ₱1,661,587.65, an amount ₱20,846.65[81] higher than the disallowed expense.

In this regard, the disallowed expense of ₱1,640,741.00, subject to 2% EWT of ₱32,814.82, is sustained.

c.2. Management and consultancy fees - ₱1,415,083.00

Petitioner claims that the disallowed expense of ₱1,415,083.00 under the "Management and Consultancy Fees" category pertains to consultancy fees paid for services rendered abroad by Pocomwell Ltd., a non-resident foreign corporation (NRFC). As such, petitioner argues that the amount should not be subject to withholding tax pursuant to Section 28(B)(1) of the NIRC of 1997, as amended.[82]

Section 28(B)(1) provides:

> **SEC. 28.** ***Rates of Income Tax on Foreign Corporations. —***
>
> xxx xxx xxx
>
> (B) *Tax on Nonresident Foreign Corporation. —*
>
> (1) *In General.* — Except as otherwise provided in this Code, a foreign corporation not engaged in trade or business in the Philippines shall pay a tax equal to thirty-five percent (35%) of the gross income received during each taxable year **from all sources within the Philippines**, such as interests, dividends, rents, royalties, salaries, premiums (except reinsurance premiums), annuities, emoluments or other fixed or determinable annual, periodic or casual gains, profits and income, and capital gains, except capital gains subject to tax under subparagraph 5(c): *Provided*, That effective January 1, 2009, the rate of income tax shall be thirty percent (30%). *(Emphasis added)*

Relative to the above provision, to prove that Pocomwell Ltd. is an NRFC not engaged in trade or business in the Philippines, petitioner must show that: (1) the service

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[81] ₱1,661,587.65 less ₱1,640,741.00.
[82] Pars. 41 to 43, *Petition for Review*, Docket – Vol. I, pp. 15 to 16.

provider/contractor was established under the laws of a foreign country; and (2) it is not engaged in trade or business in the Philippines.

At the very least, petitioner should have submitted both: (1) A Certificate of Non-Registration of Corporation/ Partnership issued by the Philippine Securities and Exchange Commission (SEC); and (2) Proof of incorporation/registration in a foreign country (*e.g.*, Certificate/Articles of Foreign Incorporation/Association, and/or Tax Residence Certificate).

The SEC Certificate of Non-Registration shows that the foreign service provider/contractor is not engaged in trade or business in the Philippines, while the Certificate/Articles of Foreign Incorporation/Association proves that the service provider/contractor was established under the laws of a foreign country. Together, these documents prove the two (2) requisites necessary to establish the NRFC status of a service provider/contractor.[83]

However, petitioner failed to present any of these documents. Although it submitted a *Consultancy Agreement*[84] which states that Pocomwell Ltd. is a company duly organized and existing under the laws of Hong Kong, this alone is not sufficient evidence to prove that Pocomwell Ltd. is an NRFC.

Since petitioner failed to properly refute respondent's assessment, the Court has no recourse but to uphold the disallowance of management and consultancy fees due to non-withholding of ₱1,415,083.00, which is subject to 10% EWT, equivalent to ₱141,508.30.

c.3. Professional Fees - ₱3,660,522.60

As regards the disallowed professional fees amounting to ₱3,660,522.60, petitioner explains that portions amounting to ₱2,531,378.84 and ₱901,339.20, for a total of ₱3,432,718.04, refers to payments made to Newrest Group International SAS and Newrest Group Services, respectively.[85]

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[83] Refer to *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.*, G.R. No. 234445, July 15, 2020.
[84] Exhibit "P-22-b", USB (Exhibit "P-36-1").
[85] Par. 44, *Petition for Review*, Docket – Vol. I, p. 16.

Petitioner presented an SEC *Certificate of Non-Registration of Company* for Newrest Group International SAS[86] to prove that it is an NRFC.[87] However, as previously discussed, non-registration with the SEC does not, by itself, prove a foreign status.

Further, petitioner asserts that the above income payments are not subject to income taxes, relying on BIR Ruling OT-223-2020. According to petitioner, the ruling affirmed that the consultancy services rendered by Newrest are performed outside the Philippines and are therefore exempt from Philippine income tax and, consequently, from withholding tax.[88]

However, the BIR Ruling No. OT-0223-2020[89] presented pertains solely to **Newrest Group Holding SL**. Petitioner submitted no evidence showing that the same ruling applies to **Newrest Group International SAS** or **Newrest Group Services**. Thus, these entities cannot benefit from the cited ruling.

Petitioner also submitted BIR Ruling No. VAT-0333-2020,[90] asserting that service fees paid to Newrest Group International SAS for services rendered outside the Philippines are exempt from income tax and, consequently, from withholding tax.

On one hand, the remaining amount of ₱227,804.56 allegedly represents income payments to General Professional Partnerships (GPPs). To support this claim, petitioner submitted the *Articles of Partnership of Magsalin, Magsalin, and Associates*,[91] as well as the Board of Accountancy *Certificate of Accreditation of Isla Lipana & Co.*,[92] allegedly the GPPs to whom the professional fees were paid.

Given the benefit that both firms are GPPs, petitioner still failed to provide supporting documents to substantiate the actual payments corresponding to the ₱227,804.56.

[86] Exhibit "P-33", Docket – Vol. II, p. 1074.
[87] Par. 97, petitioner's *Memorandum*, Docket – Vol. II, p. 1169.
[88] Par. 45, *Petition for Review*, Docket – Vol. I, p. 16.
[89] Exhibit "P-21-a", USB (Exhibit "P-36-1").
[90] Exhibit "P-21-b", USB (Exhibit "P-36-1").
[91] Exhibit "P-37", Docket – Vol. II, pp. 1078 to 1084.
[92] Exhibit "P-29", Docket – Vol. II, pp. 1068 to 1071.

Considering that no supporting document was submitted to validate petitioner's contention, the assessment on the alleged professional fee expenses amounting to ₱3,660,522.60, subject to 10% EWT or ₱366,052.26, is upheld.

Thus, while respondent's verification disclosed that petitioner failed to withhold the appropriate withholding taxes due on income payments amounting to ₱4,902,316.60, the records reveal that the amount of ₱6,716,346.60 should be sustained for failure of petitioner to prove that the same was subjected to withholding tax. Accordingly, petitioner's basic deficiency income tax liability is ₱27,254,032.60, computed as follows:

Taxable Income per return		₱64,602,918.00
Add: Discrepancies per reinvestigation		
Undeclared income	₱28,241,636.45	
Undeclared income based on NGH Agreement	55,888,792.00	
Disallowed expenses due to non-withholding	6,716,346.60	90,846,775.05
Taxable income per reinvestigation		₱155,449,693.05
Income tax due		₱46,634,908.00
Less: Total tax credits or payments, net of carry over		19,380,875.40
Basic deficiency IT		₱27,254,032.60

II. Deficiency Value-Added Tax (VAT)

Respondent assessed petitioner for deficiency VAT amounting to ₱3,270,737.78, inclusive of interest, for TY 2018, computed as follows:[93]

II. VALUE ADDED TAX		
Taxable sales/receipts subject to 12% VAT per returns		₱ -
Output tax due		-
Less: Total creditable input taxes, net of carryover	₱ -	
Less: Disallowed input tax - unsupported	2,228,272.53	(2,228,272.53)
Basic tax due		₱2,228,272.53
Add: 12% Interest (01.26.19 to 12.19.22)		1,042,465.25
TOTAL AMOUNT DUE		₱3,270,737.78

[93] Exhibit "R-9", BIR Records, at p. 894.

Respondent's verification disclosed that petitioner did not present evidence or documents to support its claimed input tax of ₱2,228,272.53, particularly to show that the same was sourced from purchases from a VAT-registered entity. Hence, the same has been disallowed in accordance with the provision of Section 110 of the NIRC of 1997, as amended, in relation to Sections 113 and 237 of the same Code.[94]

The Court agrees with the disallowance of input tax for being unsupported; however, the charging back of such input tax has no legal basis.

It should be noted that in the FLD, there is a VAT deficiency assessment for unsupported zero-rated sales.[95] During the reinvestigation and in the FDDA, respondent formally dropped the assessment on the said unsupported zero-rated sales.[96] Thus, there is no dispute that petitioner's sale is zero-rated and does not give rise to any output tax liability.

Moreover, a perusal of petitioner's *Quarterly VAT Returns* for the TY 2018[97] shows that it did not generate any taxable sales/receipts; thus, it is not liable for any output tax. Hence, the disallowance of unsupported input tax produces no effect, as there is no output tax for TY 2018 against which it could have been applied or utilized.

Correspondingly, the assessment for deficiency VAT for TY 2018 must be cancelled in its entirety.

III. Deficiency Expanded Withholding Tax (EWT)

Respondent's verification disclosed that petitioner failed to withhold/remit the corresponding EWT on income payments previously disallowed as deductions from Gross Income, amounting to ₱6,716,346.60.[98] Hence, petitioner was assessed deficiency EWT amounting to ₱540,375.38 pursuant to Section 2.57.2 of RR No. 2-1998, as amended,[99] computed as follows:

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[94] Item II.B, Exhibit "R-6-3", BIR Records, p. 788.
[95] Exhibit "R-6", BIR Records, at p. 792; Item II.A., Exhibit "R-6-3", BIR Records, p. 788.
[96] Exhibit "R-9", BIR Records, at pp. 893 to 894.
[97] Lines 15A and 15B, Exhibits "P-17-c", "P-17-f", "P-17-i" and "P-17-l", USB (Exhibit "P-36-1").
[98] Schedule 4, Exhibit "R-6-3", BIR Records, p. 788.
[99] Exhibit "R-9", BIR Records, at p. 894; Exhibit "R-6-3", BIR Records, at p. 787.

Basic Tax Due	₱ 540,375.38
Add: Interest 12% (02.01.19 to 12.19.22)	251,740.90
TOTAL AMOUNT DUE	**₱ 792,116.28**

As discussed under Item *I(c), Disallowed Expenses due to Non-withholding* (I. Deficiency Income Tax), the disallowance of the related expenses has been sustained. As a necessary consequence, the corresponding EWT assessment must likewise be upheld.

The deficiency EWT of ₱540,375.38 is broken down as follows:

Account	Disallowed Expenses/ Income Payments Discrepancy	EWT Rate	EWT Due
Purchase of Services/Contractors	₱ 1,640,741.00	2%	₱ 32,814.82
Management and consultancy fees	1,415,083.00	10%	141,508.30
Professional Fees	3,660,522.60	10%	366,052.26
TOTAL	**₱6,716,346.60**		**₱540,375.38**

Thus, petitioner is liable for deficiency EWT amounting to ₱540,375.38, plus the corresponding increments.

IV. Deficiency Final Withholding Tax (FWT)

Respondent's verification disclosed that petitioner failed to withhold/remit the corresponding FWT on income payments amounting to ₱3,286,809.31 for services rendered by NRFCs, its Related Parties under Note 19 of the AFS. Hence, petitioner was assessed deficiency FWT of ₱986,042.79, pursuant to Section 2.57.1 of RR No. 2-1998, as amended, computed as follows:[100]

Company Name (NRFC)	Transaction	Amount	Per 1601F/ MAP	Difference
New[e]rest Group Inc (Management and Consultancy Fees, ITR)	(a) Management Support	₱ 353,771.00		
	(b) Consultancy	1,171,329.00		
		₱1,525,100.00	₱ -	₱1,525,100.00
New[e]rest Group Holdings (Royalties, ITR)	Trademark and Licensing	1,761,709.00	1,415,083.69	346,625.31
Pocomwell Ltd	Consultancy	1,415,084.00	-	

[100] Schedule 5, Exhibit "R-6-3", BIR Records, p. 787.

(Management and Consultancy Fees, ITR)			1,415,084.00
Income Payments to NRFCs	₱4,701,893.00	₱1,415,083.69	₱3,286,809.31
Multiplied by: FWT Rate			30%
Basic Tax Due			**₱986,042.79**

Petitioner argues that consultancy and service fees paid to NRFCs that rendered the services outside the Philippines are not subject to income tax under Section 28(B)(1) of the NIRC of 1997, as amended, and, therefore, should not be subject to FWT.[101]

Also, petitioner contends that a perusal of the consultancy or service agreements with the subject companies would show that they are foreign corporations not engaged in business in the Philippines and that the services were intended to be performed outside the Philippines. The agreements allegedly stipulated the manner and place where the services would be rendered.[102]

To support its position, petitioner presented the following documents to show that the services of Newrest Group, Inc. (NGI), Newrest Group Holdings (NGH), and Pocomwell Ltd. were performed outside the country:

1. *Trademark Licensing Agreement* with NGH;[103]
2. *Consultancy Agreement* with Pocomwell;[104]
3. BIR Ruling No. OT-0223-2020;[105] and
4. BIR Ruling No. VAT-0333-2020.[106]

However, upon examination, the Court finds these agreements insufficient to establish petitioner's claim. The submitted agreements do not clearly indicate the manner and place where the alleged NRFCs' services were performed or intended to be performed.

[101] Par. 57, *Petition for Review*, Docket – Vol. I, p. 19.
[102] Par. 58, *Petition for Review*, Docket – Vol. I, p. 19.
[103] Exhibit "P-22-a", USB (Exhibit "P-36-1").
[104] Exhibit "P-22-b", USB (Exhibit "P-36-1").
[105] Exhibit "P-21-a", USB (Exhibit "P-36-1").
[106] Exhibit "P-21-b", USB (Exhibit "P-36-1").

Consequently, the basic deficiency FWT of ₱986,042.79 is upheld.

V. Deficiency Final Withholding VAT (FWVAT)

Respondent's verification disclosed that petitioner failed to properly withhold FWVAT on income payments for services rendered by NRFCs. Hence, petitioner was assessed FWVAT in the amount of ₱471,343.97 pursuant to Section 4.114-2(b)(3) of RR No. 16-2005, in relation to Section 4.114 of RR No. 2-98, as amended, computed as follows:[107]

Company Name (NRFC)	Transaction	Amount	Per 1600-VT/MAP	Difference
New[e]rest Group Inc (Management and Consultancy Fees, ITR)	(a) Management Support	₱353,771.00		
	(b) Consultancy	1,171,329.00		
		₱1,525,100.00	₱ -	₱1,525,100.00
New[e]rest Group Holdings (Royalties, ITR)	Trademark and Licensing	1,761,709.00	₱774,026.62	987,682.38
Pocomwell Ltd (Management and Consultancy Fees, ITR)	Consultancy	1,415,084.00	-	1,415,084.00
Income Payments to NRFCs		₱4,701,893.00	₱774,026.62	₱3,927,866.38
Multiplied by: FWOV Rate				12%
Basic Tax Due				**₱471,343.97**

As previously asserted by petitioner under *Item IV, Deficiency FWT*, the fees in question were paid to NRFCs for services rendered abroad and are therefore not subject to income tax and related withholding. However, as discussed, this assertion was not substantiated by clear and convincing evidence.

Accordingly, for lack of sufficient proof to overturn the FWVAT assessment, the basic FWVAT of ₱471,343.97 is likewise sustained.

VI. Deficiency Documentary Stamp Tax (DST)

Respondent's examiner found that petitioner failed to file and pay DST in the total amount of ₱56,173.00 on Lease

[107] Schedule 6, Exhibit "R-6-3", BIR Records, p. 787.

Agreements and Advances made to Related Parties as opposed to the AFS, Note 22: Supplementary Information required by the BIR, pursuant to Sections 179 and 194 of the NIRC of 1997, as amended. Thus, petitioner was assessed as follows:[108]

Lease Agreements	₱ 7,116.00
Add: Advances from Related Parties	49,057.00
Unremitted DST	**₱ 56,173.00**

Petitioner submits that, although the applicable DSTs are to be shouldered by it, the DST has already been remitted to the other contracting party under the pertinent agreements for payment to the BIR. As such, petitioner claims that there is no pending DST on its part.[109]

To substantiate its claim, petitioner submitted its Agreement with Aquarich, Inc.,[110] a check voucher covering payment to Aquarich, Inc.,[111] and check vouchers for payments to MAA General Assurance Phils, Inc.[112]

A review of petitioner's Agreement with Aquarich, Inc.[113] confirms that petitioner is liable for the DST. The Agreement and the check voucher for payment to Aquarich, Inc.[114] merely show that the amount of ₱7,116.00 purportedly representing DST on the lease agreement, was paid to Aquarich, Inc. However, petitioner failed to present any proof that Aquarich, Inc. actually remitted the said amount to the BIR.

As regards the ₱49,057.00 DST assessment on advances from related parties, the check vouchers[115] submitted by petitioner in favor of MAA General Assurance Phils., Inc. pertain to insurance payments and do not substantiate the claimed DST payment on such advances.

Clearly, petitioner failed to prove payment or remittance of the DST due. Accordingly, the DST assessment is sustained in full.

[108] Schedule 7, Exhibit "R-6-3", BIR Records, p. 786.
[109] Par. 119, petitioner's *Memorandum*, Docket – Vol. II, p. 1174; Par. 60, *Petition for Review*, Docket – Vol. I, p. 20.
[110] Exhibit "P-23-a", USB (Exhibit "P-36-1").
[111] Exhibit "P-23-b", USB (Exhibit "P-36-1").
[112] Exhibits "P-23-c" to "P-23-j", USB (Exhibit "P-36-1").
[113] Exhibit "P-23-a", USB (Exhibit "P-36-1").
[114] Exhibit "P-23-b", USB (Exhibit "P-36-1").
[115] Exhibits "P-23-c" to "P-23-j", USB (Exhibit "P-36-1").

VII. Deficiency Improperly Accumulated Earnings Tax (IAET)

Respondent's verification disclosed that petitioner's retained earnings exceeded one hundred percent (100%) of its paid-up capital, indicating an accumulation beyond the reasonable needs of the business. Hence, respondent assessed petitioner a 10% IAET amounting to ₱6,310,058.46, pursuant to Section 29 of the NIRC of 1997, as amended, and RR No. 2-2001, as clarified by RMC No. 35-2011, determined as follows:[116]

Taxable Income for the taxable year	₱64,602,918.00
Add: Income subject to final tax	47,353.00
Total	64,650,271.00
Less: Income tax paid	19,380,875.40
Total	45,269,395.60
Add: Retained earnings from prior years	52,831,189.00
Accumulated Earnings as of taxable year	98,100,584.60
Less: Amount that may be retained (Shared Capital)	35,000,000.00
Improperly Accumulated Earnings	63,100,584.60
Multiplied by: IAET Rate	10%
Basic Tax Due	**₱6,310,058.46**

Under RR No. 2-2001, an accumulation of earnings is deemed unreasonable if not necessary for the business, applying the Immediacy Test adopted from American jurisprudence. The term "reasonable needs of the business" refers to immediate needs or reasonably anticipated needs, provided the corporation can demonstrate a direct correlation between such needs and the accumulation. Otherwise, the penalty tax applies.

Section 3 of RR No. 2-2001 provides:[117]

> SEC. 3. *Determination of Reasonable Needs of the Business.* — An accumulation of earnings or profits (including undistributed earnings or profits of prior years) is unreasonable if it is not necessary for the purpose of the business, considering all circumstances of the case. **To determine the 'reasonable needs' of the business in order to justify an accumulation of earnings, these Regulations hereby adhere to the so-called 'Immediacy Test' under American jurisprudence as adopted in this jurisdiction.**

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[116] Schedule 8, Exhibit "R-6-3", BIR Records, p. 786.
[117] RR No. 2-2001, February 12, 2001
SUBJECT: Implementing the Provision on Improperly Accumulated Earnings Tax Under Section 29 of the Tax Code of 1997.

> **Accordingly, the term *'reasonable needs of the business'* are hereby construed to mean the immediate needs of the business, including reasonably anticipated needs. In either case, the corporation should be able to prove an immediate need for the accumulation of the earnings and profits, or the direct correlation of anticipated needs to such accumulation of profits. Otherwise, such accumulation would be deemed to be not for the reasonable needs of the business, and the penalty tax would apply.**
>
> For purposes of these Regulations, the following constitute accumulation of earnings for the reasonable needs of the business:
>
> a. Allowance for the increase in the accumulation of earnings up to 100% of the paid-up capital of the corporation as of Balance Sheet date, inclusive of accumulation taken from other years;
>
> b. Earnings reserved for definite corporate expansion projects or programs requiring considerable capital expenditure as approved by the Board of Directors or equivalent body;
>
> c. Earnings reserved for building, plants or equipment acquisition as approved by the Board of Directors or equivalent body;
>
> d. Earnings reserved for compliance with any loan covenant or pre-existing obligation established under a legitimate business agreement;
>
> e. Earnings required by law or applicable regulations to be retained by the corporation or in respect of which there is legal prohibition against its distribution;
>
> f. In the case of subsidiaries of foreign corporations in the Philippines, all undistributed earnings intended or reserved for investments within the Philippines as can be proven by corporate records and/or relevant documentary evidence. *(Emphasis added)*

Petitioner acknowledged the excess retained earnings as of December 31, 2018 and claimed that the management planned to declare stock dividends in 2019 equivalent to 150,000 additional shares at a premium of ₱300.00 per share, totaling ₱45 million.[118] However, it must be noted that Section 7 of RR No. 2-2001 explicitly provides that "[a]

[118] Exhibit "P-15", Note 12 – Equity, (b) Retained earnings, USB (Exhibit "P-36-1").

speculative and indefinite purpose will not suffice. The mere recognition of a future problem or the discussion of possible and alternative solutions is not sufficient. Definiteness of plan/s coupled with action/s taken towards its consummation are essential."

Petitioner asserts that dividends amounting to ₱20,579,000.00 were distributed to its shareholders and paid monthly from May to November 2019,[119] but petitioner failed to submit evidence to prove this allegation. The only document submitted, a *Secretary's Certificate* dated April 26, 2018,[120] pertains to cash dividends declared from the unrestricted retained earnings as of December 31, **2017**, not from TY **2018**, the year under audit.

Under Section 6 of RR No. 2-2001,[121] dividends must be declared and paid or issued not later than one year following the close of the taxable year, otherwise, the IAET, if any, should be paid within fifteen (15) days thereafter.

Petitioner did not prove compliance with this requirement nor establish that the excess retained earnings were reserved for the reasonable needs of the business. Thus, the imposition of IAET on petitioner's accumulated income for TY 2018 is proper.

Accordingly, respondent's assessment of ₱6,310,058.46 is sustained in full.

VIII. Imposition of Compromise Penalty

Respondent imposed a compromise penalty of ₱55,000.00 against petitioner for its failure to file and pay an internal revenue tax at the time or times required by law or regulation, pursuant to the schedule of suggested compromise penalties prescribed under Revenue Memorandum Order (RMO) No. 7-2015,[122] broken down as follows:[123]

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[119] Par. 62, *Petition for Review*, Docket – Vol. I, pp. 20 to 21.
[120] Exhibit "P-24", USB (Exhibit "P-36-1").
[121] "SEC. 6. *Period for Payment of Dividend/Payment of IAET.* — The dividends must be declared and paid or issued not later than one year following the close of the taxable year, otherwise, the IAET, if any, should be paid within fifteen (15) days thereafter."
[122] SUBJECT: The Revised Consolidated Schedule of Compromise Penalties for Violations of the National Internal Revenue Code.
[123] Exhibit "R-6", BIR Records, p. 790.

Nature of Violation	Violated Provision	Amount Due
Failure to file and pay Documentary Stamp	Sections 179 and 200, NIRC	₱15,000.00
Failure to file and pay Improperly Accumulated Earnings Tax	Section 29, NIRC	40,000.00
Total		**₱55,000.00**

In *San Miguel Corporation v. Commissioner of Internal Revenue*,[124] the Court clarified that a compromise penalty cannot be imposed if the taxpayer does not agree to it, considering that a compromise, by its nature, must be mutual. Moreover, since compromise penalties are suggested in the settlement of criminal tax liability, there must first be an imposition of criminal tax liabilities. Otherwise, a compromise penalty should not be imposed and collected, to wit:

> xxx [T]he compromise penalty should not be imposed on SMC, as compromise is, by its nature, mutual in essence. The records do not show that SMC agreed to the compromise penalty. This is bolstered by the fact that SMC disputed the assessment made by the CIR. It must also be noted that compromise penalty are amounts suggested in the settlement of criminal tax liability. Since SMC's case does not involve criminal tax liabilities, the compromise penalty should not have been imposed and collected.

Accordingly, the imposition of the compromise penalty in this case cannot be sustained. Under RMO 7-2015, compromise penalties are merely suggested amounts intended for the settlement of criminal tax liability and cannot be imposed or exacted on a taxpayer who refuses to pay the same. It is well-settled that the 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.[125] Absent a showing that herein petitioner consented to the compromise penalty, its imposition should be cancelled. The imposition of the same without the conformity of the taxpayer is illegal and unauthorized.[126]

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[124] G.R. Nos. 257697 & 259446, April 12, 2023.
[125] *The Philippines International Fair, Inc. v. The Collector of Internal Revenue, et al.*, G.R. Nos. L-12928 and L-12932, March 31, 1962.
[126] *Commissioner of Internal Revenue v. Lianga Bay Logging Co., Inc., et al.* G.R. No. L-35266, January 21, 1999.

To summarize, petitioner is liable for a total of ₱35,618,026.20 basic deficiency taxes for the TY 2018, to wit:

Type of Tax	Amount of Basic Deficiency Tax
Income Tax	₱27,254,032.60
VAT	-
EWT	540,375.38
FWT	986,042.79
FWVAT	471,343.97
DST	56,173.00
IAET	6,310,058.46
Total	**₱35,618,026.20**

WHEREFORE, in view of the foregoing considerations, the *Petition for Review* is **PARTIALLY GRANTED**.

Respondent's assessments for deficiency VAT and compromise penalty for taxable year 2018, are **CANCELLED** for lack of merit. However, the assessments for deficiency IT, EWT, FWT, FWVAT, DST, and IAET for the same taxable year are **UPHELD WITH MODIFICATIONS**.

Consequently, petitioner is **ORDERED TO PAY** respondent the aggregate amount of **₱55,235,625.99**, inclusive of surcharge and deficiency interest under Sections 248(A)(3) and 249(B) of the NIRC of 1997, as amended, computed as follows:

	Income tax	EWT	FWT	FWVAT	DST	IAET	Total
Basic Tax Due	₱27,254,032.60	₱540,375.38	₱986,042.79	₱471,343.97	₱56,173.00	₱6,310,058.46	₱35,618,026.20
Add: **25% Surcharge**	6,813,508.15	135,093.85	246,510.70	117,835.99	14,043.25	1,577,514.62	8,904,506.55
Add: **12% Deficiency Interest**							
Income tax: from Apr. 16, 2019 to Nov. 29, 2021 *[₱27,254,032.60 x 12% x 959/365days]*	8,592,860.46						8,592,860.46
EWT: from Feb. 1, 2019 to Nov. 29, 2021 *[₱540,375.38 x 12% x 1,033/365days]*		183,520.36					183,520.36
FWT: from Feb. 1, 2019 to Nov. 29, 2021 *[₱986,042.79 x 12% x 1,033/365days]*			334,876.34				334,876.34
FWVAT: from Jan. 11, 2019 to Nov. 29, 2021 *[₱471,343.97 x 12% x 1,054/365days]*				163,330.37			163,330.37

DST: from Jan. 8, 2019 to Nov. 29, 2021 *[₱56,173.00 x 12% x 1,057/365days]*					19,520.50		19,520.50
IAET: from Jan. 16, 2020 to Nov. 29, 2021 *[₱6,310,058.46 x 12% x 684/365days]*						1,418,985.20	1,418,985.20
Total Amount Due – Nov. 29, 2021[127]	**₱42,660,401.21**	**₱858,989.59**	**₱1,567,429.83**	**₱752,510.33**	**₱89,736.75**	**₱9,306,558.28**	**₱55,235,625.99**

In addition, petitioner is **ORDERED TO PAY** respondent delinquency interest at the rate of twelve percent (12%) *per annum* on the total unpaid deficiency taxes of **₱55,235,625.99** as of November 29, 2021, as determined above, or equivalent to ₱18,159.66[128] per day, computed from November 30, 2021 until full payment, pursuant to Section 249(C) of the NIRC of 1997, as amended by RA No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN) and as implemented by RR No. 21-2018.

Lastly, pursuant to Section 13 of RA No. 9282, considering that this Decision is partly favorable to the national government, the BIR, through respondent, is hereby 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 levy the real property of petitioner in sufficient quantity to satisfy the tax or charge, together with any increments thereto incident to delinquency.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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[127] November 29, 2021 is the due date for payment shown in the *Assessment Notices*, Exhibit "R-6-5" to "R-6-12", BIR Records, pp. 794 to 801.
[128] ₱55,235,625.99 multiplied by 12% divided by 365 days.

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 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
Acting Presiding Justice