REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

PHILIPPINE AEROSPACE DEVELOPMENT CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 1035
(CTA Case No. 7830)

Present:
DEL ROSARIO, *P.J.,*
CASTAÑEDA JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

FEB 09 2016 2:45 p.m.

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AMENDED DECISION

RINGPIS-LIBAN, *J.*:

This resolves petitioner's "Motion for Reconsideration (of the 11 March 2015 Decision)" filed on April 22, 2015.

Petitioner's motion for reconsideration asks the Court *En Banc* to reconsider its Decision dated March 11, 2015 on the ground that the Special First Division's Decision and Resolution did not consider significant facts that have obvious effects on the computation of the tax liability of petitioner, and did not apply properly Section 249 of the NIRC, especially with respect to 1) expenses for purchase of Rolls Royce parts; 2) petitioner's use of the actual receipt method; 3) Withholding tax that was paid by way of attorney's fees, consultants, repairs and maintenance, labor, security and advertising, salaries and wages, and purchase of service parts; 4) reimbursement for shared expenses such as share on electricity and water consumption which is not subject to VAT; 5) dispositions not in the ordinary course of business; and 6) Simultaneous deficiency and delinquency interests.

Disallowed Deductions for Unsupported Purchases

Petitioner pleads for the reconsideration of the Court *En Banc's* ruling upholding respondent's deficiency income tax assessment mainly for failure of petitioner to reconcile the difference noted between the purchases per VAT returns as against the expenses declared in the financial statements amounting to ₱18,493,926.37, hence was disallowed as deduction from gross income for being unsupported pursuant to Section 34(A)(1)(b) of the NIRC of 1997, as amended.

Respondent arrived at such difference from the computation below:

Purchases per value-added tax return		₱ 20,344,198.63
Less: Accounts per financial statement subject to withholding taxes		
Repairs and maintenance	₱3,260,294.00	
Rent expense – land	1,637,728.00	
Security/janitorial services	1,184,175.00	
Telephone, postage, telegram	630,080.00	
Advertising/promotions	610,392.00	
Office supplies	261,812.00	
Representation and entertainment	45,319.00	
Medical supplies	10,766.00	7,640,566.00
Difference - Purchase of service parts		₱ 12,703,632.63
Less: Purchases of service parts:		
Service parts used	40,328,811.00	
Add: Inventory, beginning	87,389,889.00	
Total	127,718,700.00	
Less: Inventory, ending	96,521,141.00	31,197,559.00
Unsupported purchases		**₱ (18,493,926.37)**

Based on the re-evaluation of the Court, the above computation cannot be used as basis to support petitioner's claimed deduction in its income tax return.

It must be stressed that, petitioner, in following the accrual basis of accounting, must only be taxed on its income earned during the taxable period with allowed deduction for costs/expenses incurred necessary to generate such income, regardless of when collected or paid, as the case may be.

In this case, respondent attempted to disallow deductions from petitioner's gross income based on the total value of its purchases during the period. However, such purchases during the period may not have been consumed in the same period in order to generate the income as reported in the FS/ITR.

In arriving at the amount allegedly unsupported to warrant disallowance of deduction for income tax purposes, it is apparent that respondent devolved her investigation on the service parts actually used during the period as the same may be attributable to the income earned by petitioner for the period, which may be computed in the following manner:

Inventory, beginning	₱xxx
Add: Purchases of service parts	xxx
Cost of goods available for sale	xxx
Less: Inventory, ending	xxx
Service parts used/Cost of goods sold	**₱xxx**

At most, these purchases of service parts for the period may be assessed by respondent for deficiency VAT purposes since the Philippine VAT law and regulations contemplates VAT imposition upon every sale, barter or exchange of goods and properties.

Based on the foregoing, the Court believes that the income tax assessment on the unsupported purchases must be struck down for being issued by respondent using an incorrect factual basis. Thus, the basic deficiency income tax assessment, as previously upheld by this Court *En Banc*, must be reduced by ₱5,918,056.44 (₱18,493,926.37 x 32%). The remaining amount of deficiency income tax due from petitioner must only be ₱8,150,361.91 (₱14,068,418.34 – ₱5,918,056.44).

Likewise, the corresponding input VAT amounting to ₱1,849,392.64 based on the above assessment which was disallowed by respondent, resulting in deficiency VAT, also has no basis to stand on.

Gleaning from the above computation by respondent, the Court finds that only the amount of ₱12,703,632.63 allegedly arose from purchases of service parts for the taxable year 2003. In finding that ₱31,197,559.00 must be the purchases of service parts subject to VAT, respondent disallowed the input VAT allegedly "claimed" by petitioner on the difference of ₱18,493,926.67.

The Court finds this analysis by respondent erroneous. It is clear that the purchases of service parts declared by petitioner in its VAT returns were significantly lower than the actual purchases determined by respondent. Hence, it only shows that there were purchases made by petitioner wherein no input VAT was accordingly claimed. To disallow an input VAT credit which was not claimed by petitioner in the first place would tantamount to levying VAT on the petitioner without the benefit of any creditable input tax, hence, resulting to undue burden on its part.

As such, the Court deems it proper to further reduce the basic deficiency VAT assessed upon petitioner to ₱5,594,402.37 from that previously upheld by this Court amounting to ₱7,443,795.01.

Petitioner's Use of the Actual Receipt Method

Petitioner questions the CIR's assessment of undeclared income from Accounts Receivables based on the Requisition and Delivery Issue Slips (RDIS) which were issued in 2003, but not yet billed as of December 31, 2003, thereby subjecting the amount of ₱1,093,100.00 to a thirty-two percent (32%) tax rate.

Petitioner argues that under its accounting system, it only recognizes sales when the corresponding sales invoices are issued despite earlier delivery of the items due to the peculiar arrangement it has with its clients which include the different branches of military and police. Thus, despite delivery of the items, petitioner is not paid until all other work orders from such entities have been completed. Since some of the deliveries/repairs were paid on 2004 or thereafter, there was no undeclared income for 2003 as petitioner uses the "actual receipt" method rather than the "accrual method".

However, in the Decision of the Special First Division, the Court *a quo* held that the evidence presented in the trial showed that petitioner adopted the accrual method in reporting its income and expenses for income tax purposes. We quote the pertinent portion of the Decision thus:

> "In its letter[1] to the BIR dated October 10, 2007, requesting reconsideration of respondent's decision on the subject assessments, petitioner stated that it recognizes its income at the exact instance it is earned and reports the same to the concerned government agencies, like the Commission on Audit, the Department of Transportation, and the BIR. Likewise, petitioner declared that there were Consultants' fees which were supposed to be paid to the Office of the Government Corporate Counsel for legal services rendered to petitioner, which were not yet paid in 2003, but taken-up in petitioner's books on accrual basis.[2]

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[1] *Id.* at Note 1, citing Exhibit "H", under Income Tax, Item No. 3, par. 2, Docket, p. 282.
[2] *Id.* at Note 1, citing Exhibit "H", under Income Tax, Item No. 4, par. 3, Docket, p. 283.

The foregoing arguments of petitioner reveal that it adopts the accrual method in reporting its income and expenses for income tax purposes. The employment of such accounting method, or any method for that matter, as long s it clearly reflects income, is recognized in Section 43 of the NIRC of 1997, as amended, which provides:

x x x

Under the accrual method, income is recognized in the period it is earned regardless of whether it has been received or not. In the same manner, expenses are accounted for in the period they are incurred and not in the period they are paid.

For purposes of determining when an income or expense is to be accrued, the taxpayer must apply the all-events test which requires: (1) fixing of a right to income or liability to pay; and (2) the availability of the reasonable accurate determination of such income or liability, as held by the Supreme Court in the case of ***Commissioner of Internal Revenue vs. Isabela Cultural Corporation***[3], *viz:*

> 'The accrual method relied upon the taxpayer's right to receive amounts or its obligation to pay them, in opposition to actual receipt or payment, which characterizes the cash method of accounting. Amounts of income accrue where the right to receive them become fixed, where there is created an enforceable liability. Similarly, liabilities are accrued when fixed and determinable in amount, without regard to indeterminacy merely of time payment.
>
> For a taxpayer using the accrual method, the determinative question is, when do the facts present themselves in such a manner that the taxpayer must recognize income or expense? **The accrual of income and expense is permitted when the all-events test has been met. This test requires: (1) fixing of a right to income or liability to pay and (2) the availability of the reasonable accurate determination of such income or liability.**' *(Emphasis supplied)*

[3] *Id.* citing G.R. No. 172231, February 12, 2007.

In the case of ***Filipinas Synthetic Fiber Corporation vs. Court of Appeals, Court of Tax Appeals and Commissioner of Internal Revenue***[4]**,** the Highest Tribunal emphasized that in accrual method of accounting, it is the right to receive income and not the actual receipt that determines when to include the amount in gross income, to wit:

> 'On the other hand, 'under the accrual basis method of accounting, income is reportable when all the events have occurred that fix the taxpayer's right to receive the income, and the amount can be determined with reasonable accuracy. Thus, *it is the right to receive income,* **and not the actual receipt, that determines when to include the amount in gross income.** Gleanable from this notion are the following requisites of accrual method of accounting, to wit: '(1) that the right to receive the amount must be valid, unconditional and enforceable, *i.e.*, not contingent upon future time; (2) the amount must be reasonably susceptible of accurate estimate; and (3) there must be a reasonable expectation that the amount will be paid in due course." *(Emphasis supplied)*

Applying the foregoing pronouncements to the instant case, the Accounts Receivable of petitioner as of December 31, 2003 amounting to ₱1,093,100.00, though unbilled and unpaid, should have been recognized as income by petitioner in 2003 inasmuch as the items have been delivered per the Requisition and Delivery Issue Slips. The income accrues to petitioner since there was already an unconditional right to the receipt of a sum certain, even though actual payment thereof has been deferred. Consequently, respondent's assessment on the amount of ₱1,093,100.00 shall be upheld."

We find no reason to disturb this finding.

Withholding tax Paid by Way of Attorney's Fees, Consultants, Repairs and Maintenance, Labor, Security and

[44] *Id.* citing G.R. Nos. 118498 and 124377, October 12, 1999.

Advertising, Salaries and Wages, and Purchase of Service Parts

Petitioner also seeks reconsideration of the finding of the Special First Division that petitioner failed to withhold the ₱32,590,929.64 that was paid out by way of attorney's fees, consultants, repairs and maintenance, labor, security and advertising, salaries and wages, and purchase of service parts, despite petitioner having filed with the Bureau of Internal Revenue (BIR) the necessary forms evidencing payment of withholding tax and submitting to the Court *a quo* certified true copies thereof.[5] Petitioner contends that the difference between the ITR/FS versus the Alphalist amounting to ₱17,112,939.93 accordingly pertains to purchase of service parts.

Petitioner insistently argues that the difference noted by respondent was from (1) mere turn-over of inventories from the former's subsidiaries which already closed down, hence, are not actual purchases subject to withholding tax, and (2) purchases from Rolls Royce amounting to ₱27,030,000.00 which was supposedly exempt from all local and national taxes, since said supplier is CSEZ-registered (as supported by Exhibits "K" to "K-4").

In addition, petitioner merely presented BIR Forms evidencing payment of withholding taxes (Exhibits "T-12", "T-12-a", "T-12-b", "L-3" to "L-12").

Petitioner claims that it should not be faulted for the CIR figure of ₱17,112,939.93 as it is not in position to explain why the entire amount of ₱27,030,000.00 from the purchase of the VAT-exempt Rolls Royce was not considered by the CIR.

The Court cannot ascribe much weight to petitioner's excuse when it was well within its power to prove its own claims. Being the owner of the accounting records, petitioner has all the means and resources to reconcile any difference noted. The presumption is always in favor of the correctness of an assessment, and the burden is upon the taxpayer to refute such assessment with the presentation of clear and convincing evidence which is formally offered and admitted by this Court. Hence, petitioner must present all necessary evidence to support every aspect of its claims instead of shifting the burden to respondent.

Reimbursement for Shared Expenses such as Share on Electricity and Water Consumption which is Not Subject to VAT

[5] Exhibits "T" to "T-12", "T-12-a", "T-12-b", "L-3" to "L-12".

Petitioner likewise seeks reconsideration of the finding of the Court *a quo* that only a portion of its total VAT-able income was declared, thereby upholding the ten percent (10%) VAT imposition on the amount of ₱402,034.95, the supposed revenue which was not subjected to VAT.

Petitioner argues that the amount claimed by the CIR to be VAT-able is not, because it represents reimbursements for shared expenses such as share on electricity and water consumption. Furthermore, the fact that petitioner issued receipts for the reimbursements did not convert the reimbursement into sales or service from which petitioner gained profit from.

A review of the assailed Decision shows that the Court *a quo* thoroughly evaluated the evidence presented by petitioner, such as various sales invoices and official receipts[6], prior to coming to the conclusion that petitioner is liable to pay 10% VAT on the amount of ₱402,034.95, and We find no reason to disturb this finding.

On this subject, the assailed Decision states:

> "A careful scrutiny of the aforesaid documents indicates that these pertain to amounts billed and/or received by petitioner for import clearance, electricity charges, bid documents, photocopy, and dividends on preferred stock. However, the amounts shown on these documents do not tally with the discrepancy in revenues amounting to ₱402,034.95.
>
> In addition, based solely on said documents, the Court cannot ascertain whether the amounts indicated therein are mere reimbursements of cost and that no amount of profit was added or charged by petitioner. Likewise, it cannot be determined with certainty whether or not petitioner claimed the entire input tax related to the shared expenses. Such fact is relevant herein, considering that if petitioner claimed the entire input tax on the shared expenses, then the amounts billed by petitioner for reimbursements must be subject to output tax.
>
> Be that as it may, petitioner issued VAT invoices and official receipts for the alleged shared expenses. Based on Sections 106(D) and 108(C) of the NIRC of 1997, as amended, the amounts indicated in the VAT invoice and official receipt

[6] *Id.* at Note 1, Exhibits "P-1" to "P-62", Docket, pp. 334-394.

included the 10% VAT imposed under Sections 106(A) and 108(A) of the same Code.

Following the said provisions, the VAT invoices and official receipts issued by petitioner for the shared expenses included the 10% VAT. Such 10% VAT became petitioner's output VAT, which in turn became the input tax of the entities to whom the VAT invoices and official receipts were issued. Clearly, petitioner is liable to pay 10% VAT on the amount of ₱402,034.95."

Dispositions Not in the Ordinary Course of Business

Petitioner seeks reconsideration of the Court *a quo's* finding which upheld respondent's assessment of deficiency VAT due to petitioner's disposal of tools and other equipment which were not subjected to VAT.

Petitioner argues that contrary to the finding in the assailed Decision, the disposition of ₱307,555.00 corresponds to the sale of unserviceable scrap material which were of no value to petitioner, and the disposition of tools and equipment do not comprise inventory for sale. As such, these dispositions were not in petitioner's ordinary course of trade or business and, hence, not subject to VAT.

The ₱5,672,000.00 allegedly realized from the sale of properties was not actually realized as it was merely offered for sale in public bidding although the book value of the unserviceable equipment was stated.

However, the Court *a quo* found in its Decision that respondent's assessment was in order as the disposal of tools and equipment were done in the ordinary course of trade or business, meaning the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, as defined in Section 105 of the NIRC. It stated:

> "Based on the foregoing, the VAT is imposed on a sale or transaction entered into by a person in the course of any trade or business. A transaction wil be characterized as having been entered into by a person in the course of trade or business if it is: (1) regularly conducted; and (2) undertaken in pursuit of a commercial or economic activity. Likewise, transactions that are made incidental to the pursuit of a commercial or economic activity are considered as entered into in the course of trade or

> business. 'Incidental' means something else as primary; something necessary, appertaining to, or depending upon another, which is termed the principal. Hence, an isolated transaction is not necessarily disqualified from being made incidentally in the course of trade or business.[7]
>
> **Absence proof to the contrary, the tools and equipment subject of the assessment shall be considered to have been used by petitioner in the conduct of its business. Prior to the sale, the tools and equipment formed part of petitioner's assets being used in its business operations. Therefore, petitioner's sale of tools and equipment is an incidental transaction because the said tools and equipment were used in furtherance of petitioner's business.** Consequently, the proceeds from the sale in the amount of ₱307,555.00 shall be subject to the 10% VAT imposed under Section 106(A) of the NIRC of 1997, as amended, as correctly determined by respondent." *(Emphasis supplied)*

Likewise, We find no reason to disturb this finding.

Petitioner's reliance on the testimony of Ms. Nancy Pagharion, its lone witness, in establishing its arguments cannot be given much weight as these are self-serving, unless the same was corroborated by supporting documents. This, petitioner failed to do.

Simultaneous Deficiency and Delinquency Interest

Lastly, petitioner assails the Special First Division's simultaneous imposition of deficiency and delinquency interest, with the delinquency interest computed on the basis of the tax plus the deficiency interest as it claims that this manner of imposition is not in accordance with Section 249 of the Tax Code.

Petitioner claims that since delinquency interest is imposed on the "unpaid amount", for purposes of computing the delinquency interest, only the unpaid tax must be considered and not the unpaid tax, surcharge, and interest combined.

[7] *Id.* at Note 1, citing *CS Garments, Inc. vs. Commissioner of Internal Revenue*, CTA EB Case No. 287, January 14, 2008.

The simultaneous imposition of deficiency and delinquency interest has already been explained by the Special First Division in its Resolution dated June 5, 2013[8], thus:

> "In the case of *Tekanaka Corporation Philippine Branch vs. Commissioner of Internal Revenue*[9], this Court *En Banc* thoroughly explained the basis on the imposition of deficiency and delinquency interests at the same time, viz:
>
> > 'x x x Deficiency is defined as the amount still due and collectible from a taxpayer upon audit or investigation; whereas delinquency is defined as the failure of the taxpayer to pay the tax due on the date fixed by law or indicated in the assessment notice or letter of demand.
> >
> > Consequently, deficiency interest is imposed upon any tax that is till due and unpaid to the government. Such interest is imposed by the fact that a portion of the tax imposed by law, which is the 'deficiency tax', is still withheld by the taxpayer. Otherwise stated, it is imposed on the amount short of the full tax due and should be paid to the government, which is the deficiency tax.
> >
> > Delinquency interest, on the other hand, is the interest imposed on failure to pay (i) the amount of tax due on any return required to be filed, (ii) the amount of tax due for which no return is required, or (iii) deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner. It is the interest upon the delay in the payment of the amount of tax due whether return is required to be filed or not, or delay in the payment of deficiency tax, surcharges and interests thereon.
> >
> > Further, as to when the deficiency and delinquency interests legally accrue, Section 249(B) and (C)(3) of the NIRC of 1997, as amended, evidently states that the deficiency interest on any deficiency tax shall be assessed *'from the date prescribed*

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[8] *Rollo*, pp. 75-84.
[9] *Id.*, citing CTA EB Case No. 745 (CTA Case No. 7701), September 4, 2012.

> *for its payment until the full payment thereof*; while the assessment of the delinquency interest that is imposed upon failure to pay a deficiency tax, or any surcharge or interest thereon, shall be reckoned from *'the due date appearing in the notice and demand of the Commissioner until the amount is fully paid.'*
>
> Clearly, these two (2) interests are different in nature. ***Deficiency interest is imposed for the shortage of taxes paid, while delinquency interest is imposed for the delay in payment of taxes.*** Hence, having different nature *(sic)* for their existence, petitioner cannot assail double imposition of interests as the law itself allows the simultaneous imposition of these two kinds of interests. x x x" *(Emphasis in the original)*

While *Tekanaka* alluded to the simultaneous imposition of deficiency and delinquency interests as grossly excessive and unjust, possibly owing to remnant legislation from the Martial Law days of former President Ferdinand E. Marcos, the Court therein acknowledged that judicial legislation was out of the bounds of their mandate. When the law is clear, there is no occasion for interpretation, only application. So it must be with Us.

In view of the foregoing, the Motion for Reconsideration filed by petitioner is **PARTIALLY GRANTED.** Petitioner is **ORDERED TO PAY** basic deficiency taxes in the reduced aggregate amount of **TWENTY-ONE MILLION FIVE HUNDRED SEVEN THOUSAND THREE HUNDRED NINETY PESOS AND 12/100 (₱21,507,390.12)**, inclusive of the 25% surcharge imposed under Section 248(3) of the NIRC of 1997, as amended, computed as follows:

	Basic	Surcharge	Total
Income tax	₱ 8,150,361.91	₱ 2,037,590.48	₱ 10,187,952.39
Value-added tax	5,594,402.37	1,398,600.59	6,993,002.96
Expanded withholding tax	378,026.62	94,506.66	472,533.28
Withholding tax on compensation	3,083,121.19	770,780.30	3,853,901.49
Total	**₱ 17,205,912.09**	**₱4,301,478.03**	**₱21,507,390.12**

In addition, petitioner is hereby **ORDERED TO PAY**:

a) Deficiency interest at the rate of 20% per annum on the basic deficiency income tax, expanded withholding tax, value-added tax and withholding tax on compensation computed from the dates indicated below until full payment thereof, pursuant to Section 249(B) of the NIRC of 1997, as amended:

Tax Type	Basic Tax	Deficiency interest computed from
Income Tax	₱ 8,150,361.91	April 15, 2004
Value-Added Tax	5,594,402.37	January 25, 2004
Expanded Withholding Tax	378,026.62	January 15, 2004
Withholding Tax on Compensation	3,083,121.19	January 15, 2004

b) Delinquency interest at the rate of 20% per annum on the total amount of ₱21,507,390.12 and on the 20% deficiency interest which have accrued as aforestated in (a), computed from September 3, 2008 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

(Concurring and With Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

(With Concurring Opinion)
JUANITO C. CASTAÑEDA JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

With due respect, I join PJ's Concurring and Dissenting Opinion.
ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

(With Concurring Opinion)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, it is hereby certified that the above Amended Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

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- versus -

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Respondent.

CTA EB NO. 1035
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Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas, *and*
Ringpis-Liban, *JJ.*

Promulgated:
FEB 09 2016 2:45 p.m.

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CONCURRING AND DISSENTING OPINION

DEL ROSARIO, PJ:

I concur with the *ponencia* in partially granting petitioner's Motion for Reconsideration.

With due respect, the point of my dissent relates to the ponencia's ruling that deficiency interest can be imposed in this case insofar as it relates to Value-Added Tax (VAT), Expanded Withholding Tax (EWT) and Withholding Tax on Compensation (WTC).

I submit that deficiency interests cannot be imposed on all types of taxes or deficiency taxes, particularly on VAT, EWT and

WTC. In this regard, I quote below the position I have taken in *Avon Products Manufacturing, Inc. vs. Commissioner of Internal Revenue*[1] on the imposition of deficiency interest:

> "xxx I am not unaware of *Paper Industries Corporation of the Philippines vs. Court of Appeals, Commissioner of Internal Revenue, and Court of Tax Appeals (PICOP)*,[2] which somehow made mention of deficiency interest under the NIRC of 1977. I must stress, however, that *PICOP* cannot be relied upon to justify the imposition of deficiency interest on petitioner's excise tax liability. *PICOP* did not state nor resolve the issue whether or not the deficiency interest provided for in Section 249 (B) of the NIRC of 1997, as amended, may be imposed on tax other than donor's, estate, and income taxes. Thus, not having been resolved therein, *PICOP* cannot be considered as a doctrine on the matter. The case of *Office of the Ombudsman vs. Honorable Court of Appeals and Former Deputy Ombudsman for the Visayas Arturo C. Mojica*,[3] is instructive:
>
>> "The legal maxim "*stare decisis et non quieta movere*" (follow past precedents and do not disturb what has been settled) states that where the same questions relating to the same event have been put forward by parties similarly situated as in a previous case litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt relitigate the same issues.
>>
>> xxx xxx xxx
>>
>> **Thus, where the issue involved was not raised nor presented to the court and not passed upon by the court in the previous case, the decision in the previous case is not *stare decisis* of the question presented."** (Emphasis supplied)
>
> If *PICOP* has any relevance to the present controversy, it is the doctrinal precedent that **deficiency interest may be imposed only on tax specifically covered by the relevant provision of the NIRC of 1977**. Thus, the Court in *PICOP*, while recognizing that transaction tax is in the nature of income tax and that deficiency interest is imposable on income tax, nonetheless declined to impose such deficiency interest on transaction tax after noting the significant provisions of the NIRC of 1977: ***first*, it is Section 51 (c)(1), (e)(1), and (3) which impose deficiency interest; *second*, Section 51 (c) (1) confines such deficiency interest on taxes covered by TITLE II; and, *third*, that transaction tax does not fall within TITLE II**. Thus:

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[1] CTA EB No. 1062, January 15, 2016.
[2] G.R. Nos. 106949-50, December 1, 1995.
[3] G.R. No. 146486, March 4, 2005.

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> **"It will be seen that Section 51 (c) (1) and (e) (1) and (3), of the 1977 Tax Code, authorize the imposition of surcharge and interest only in respect of a *"tax imposed by this Title,"* that is to say, Title II on "Income Tax."** It will also be seen that Section 72 of the 1977 Tax Code imposes a surcharge only in case of failure to file a return or list *"required by this Title,"* that is, *Title II on "Income Tax."* **The thirty-five percent (35%) transaction tax is, however, imposed in the 1977 Tax Code by *Section 210 (b) thereof which Section is embraced in Title V on"Taxes on Business"* of that Code.** Thus, while the thirty-five percent (35%) transaction tax is in truth *a tax imposed on* interest *income* earned by lenders or creditors purchasing commercial paper on the money market, the relevant provisions, *i.e.,* Section 210 (b), were *not* inserted in Title II of the 1977 Tax Code. The end result is that the thirty-five percent (35%) transaction tax is *not* one of the taxes in respect of which Section 51 (e) authorized the imposition of surcharge and interest and Section 72 the imposition of a fraud surcharge." (Emphases supplied)

True, the Supreme Court in *PICOP* declared that the present provision of the NIRC mentions that **additions** on tax applies to all taxes. While such pronouncement may not be construed beyond the context in which it was made, *PICOP* simply confirmed that *in general*, certain penalties and charges are applicable to all types of tax or deficiency tax; PICOP, however, did not categorically construe the provision of Section 249 (B) that deals with "deficiency interest" on the type of tax "as defined in [the] Code". Note that the present NIRC is explicit with respect to the type of tax on which deficiency interest may be imposed, viz:

> 'Section 249.Interest-
>
> (B) Deficiency Interest. – Any deficiency in the tax due, **as the term is defined in this Code**, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.' (Emphasis supplied)

Section 249 (B) cannot be any clearer: the deficiency interest must refer only to 'deficiency in the tax due, <u>as the term is defined in [the] Code</u>.'

Verily, as the law stands, only donor's, estate, and income taxes carry a provision on deficiency tax; they are the types of taxes on which such deficiency interest may be imposed.

Finally, Sections 247 (a) and 249 (A) are **general provisions** that impose "additions" to the tax and "interest" thereon.

> Both sections may not be read in isolation from the relevant and **specific provision** of Section 249 (B) with respect to the imposition of "deficiency" interest, more so as all these provisions fall within the same Chapter I of Title X of the NIRC of 1997, as amended."

Otherwise stated, Sections 247 (a) and 249 (A) must reasonably be read and construed subject to the provision of Section 249 (B) - - all these provisions being covered by the same Chapter I of Title X of the NIRC of 1997, as amended.

In sum, deficiency interest may be imposed only on tax specifically covered by the relevant provisions of the NIRC, *i.e., income tax, donor's tax and estate tax*; conversely, deficiency interest may not properly be imposed on the basic VAT, EWT and WTC assessed against petitioner.

Anent Hon. Associate Justice Amelia R. Cotangco-Manalastas' statement in her Separate Concurring Opinion that "a taxpayer that was issued a deficiency tax assessment (Final Assessment Notice/Formal Letter of Demand) would be placed in a better position than a taxpayer who was not yet issued a deficiency tax assessment," I submit with due respect, that such proposition is incorrect.

Settled is the rule that laws imposing tax is construed strictly against the government and liberally in favor of the taxpayer. **Unless clearly imposed by pertinent provision of law, deficiency interest as an additional tax burden should not simply be presumed. Thus, the obligation to pay deficiency interest may not be applied to taxes other than income tax, donor's tax and estate tax, irrespective of whether an assessment is issued or not. After all, the deficiency tax assessed is still subject to the delinquency interest rate of 20% per annum until fully paid. Truth be told, the delinquency interest rate of 20% is way more than the legal interest of 12% per annum.**

With regard to Hon. Associate Justice Amelia R. Cotangco-Manalastas' conclusion that the non-imposition of deficiency interest on taxes other than donor's, income, and estate taxes means that the BIR cannot assess taxpayers for "deficiency" on other taxes, with due respect, again that is erroneous. The BIR's authority to assess taxpayers for deficiency on taxes other than income tax, donor's tax and estate tax, remains valid and unaltered by the position I have taken.

All told, I vote to partially grant petitioner's Motion for Reconsideration with modification relating to the imposition of 20% deficiency interest on the assessed basic VAT, EWT and WTC, which should appropriately be cancelled and set aside.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PHILIPPINE AEROSPACE DEVELOPMENT CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1035
(CTA CASE NO. 7830)

Present:

Del Rosario, P.J.,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas, and
Ringpis-Liban, JJ.

Promulgated:

FEB 09 2016 2:45 p.m.

x---x

SEPARATE CONCURRING OPINION

CASTAÑEDA, JR., J.:

I concur with the Amended Decision of J. Ringpis-Liban, nonetheless, it bears stressing the following points:

1. With due respect, I do not agree with the position of my esteemed colleague P.J. Del Rosario in his dissenting opinion that *no* deficiency interest under Section 249(B) of the National Internal Revenue Code of 1997 (1997 NIRC) must be imposed on the deficiency EWT, WTC and VAT assessments. Section 247(a) in relation to Section 249(B) of the 1997 NIRC sanctions the imposition of deficiency interest on the deficiency EWT, WTC and VAT of the petitioner; and,

2. Section 249(B) and (C) of the 1997 NIRC authorizes the simultaneous imposition of deficiency interest and delinquency interest.

Section 247(a) in relation to Section 249(B) of the 1997 NIRC authorizes the imposition of deficiency interest on the deficiency tax of the petitioner.

The law is clear. There is no room left for interpretation.

Section 247 of the 1997 NIRC provides:

"**TITLE X**
STATUTORY OFFENSES AND PENALTIES

CHAPTER I
ADDITIONS TO THE TAX

SECTION 247. General Provisions. —

(a) The additions to the tax or deficiency tax prescribed in this Chapter shall apply to **all taxes**, fees and charges **imposed in this Code**. The amount so added to the tax shall be collected at the same time, in the same manner and as part of the tax." (emphasis and underscoring supplied)

The text of Section 247(a) states without any doubt that the additions under Chapter I, Title X are applicable to *all taxes* imposed under the code, i.e. the 1997 NIRC. The authority under that provision extends to *all taxes* regardless of the title under which they are classified.

Thus, contrary to the position taken in the dissent, the law does *not* limit these additions to only the three (3) types of internal revenue taxes, namely, income (Title II), estate (Title III) and donor's tax (Title III). Their imposition applies with equal force and effect to the other taxes under the 1997 NIRC such as the value-added tax (Title IV), other percentage taxes (Title V), excise tax (Title VI) and documentary stamp tax (Title VII).

Accordingly, the additions to the tax or deficiency tax such as, among others, *Civil Penalties or Surcharges* under Section 248, *Deficiency Interest* under Section 249(B), *Delinquency Interest* under Section 249(C), and *Installment on Extended Payment* under Section 249(D) are applicable to petitioner's deficiency EWT, WTC and VAT, as well. *jc*

The dissent reasoned that because there is no definition for *deficiency* EWT, WTC and VAT unlike those for *income tax* in Section 56(B), for *estate tax* in Section 93 and for *donor's tax* in Section 104 then no deficiency interest can be imposed on the deficiency EWT, WTC and VAT due from the petitioner. The *lacuna* or the missing definition noted in the dissent was precisely addressed by Section 247(a) when this provision was first legislated through the amendments to the *1977 NIRC* and which were then subsequently reenacted in the 1997 NIRC.

The Supreme Court had the occasion to discuss the history of this provision in *Paper Industries Corporation of the Philippines (PICOP) v. Court of Appeals, et al.*[1]

In said case, the Supreme Court held that PICOP was *not* liable for interest and surcharge on the unpaid transaction tax because the 1977 Tax Code *then* applicable authorized the imposition of interest and surcharge *only* on taxes within Title II of the code (Income Tax). Therefore, since the transaction tax was embraced under a different title, Title V (Taxes on Business), then the Court concluded that transaction tax was not one of the taxes for which interest and surcharge could be imposed. *Nonetheless, it further expounded that this inadvertence in the 1977 NIRC was cured subsequently by fiat.* Thus:

> "The CIR, both in its petition before the Court of Appeals and its Petition in the instant case, points to Section 51(e) of the 1977 Tax Code as its source of authority for assessing a surcharge and penalty interest in respect of the thirty-five percent (35%) transaction tax due from Picop.
>
> <u>It will be seen that Section 51(c)(1) and (e)(1) and (3), of the 1977 Tax Code, authorize the imposition of surcharge and interest only in respect of a "*tax imposed by this Title*," that is to say, *Title II on "Income Tax.*"</u> It will also be seen that Section 72 of the 1977 Tax Code imposes a surcharge only in case of failure to file a return or list "*required by this Title*," that is, *Title II on "Income Tax."* The thirty-five percent (35%) transaction tax is, however, imposed in the 1977 Tax Code by *Section 210 (b) thereof which Section is embraced in Title V on "Taxes on Business"* of that Code. Thus, while the thirty-five percent (35%) transaction tax is in truth a *tax imposed on* interest *income* earned by lenders or creditors purchasing commercial paper on the money market, the relevant provisions, *i.e.*, Section 210(b), were *not* inserted in Title II of the 1977 Tax Code. <u>The end result is that the thirty-five percent (35%) transaction tax is *not* one of the taxes in respect of which</u> ge

[1] G.R. No. 106949-50, December 1, 1995 consolidated with *Commissioner of Internal Revenue v. Paper Industries Corporation of the Philippines (PICOP), et al.*, G.R. No. 106984-85, December 1, 1995.

Section 51(e) authorized the imposition of surcharge and interest and Section 72 the imposition of a fraud surcharge.

It is not without reluctance that we reach the above conclusion on the basis of what may well have been an inadvertent error in legislative draftsmanship, a type of error common enough during the period of Martial Law in our country. Nevertheless, we are compelled to adopt this conclusion. We consider that the_authority to impose what the present Tax Code calls (in Section 248) *civil penalties* consisting of additions to the tax due, must be expressly given in the enabling statute, in language too clear to be mistaken. The grant of that authority is not lightly to be assumed to have been made to administrative officials, even to one as highly placed as the Secretary of Finance.

The state of the present law tends to reinforce our conclusion that Section 51 (c) and (e) of the 1977 Tax Code did not authorize the imposition of a surcharge and penalty interest for failure to pay the thirty-five percent (35%) transaction tax imposed under Section 210 (b) of the same Code. The corresponding provision in the *current* Tax Code very clearly embraces failure *to pay all taxes imposed in the Tax Code*, without any regard to the Title of the Code where provisions imposing particular taxes are textually located. Section 247 (a) of the NIRC, as amended, reads:

> 'Title X
> Statutory Offenses and Penalties
>
> Chapter I
> Additions to the Tax
>
> SECTION 247. *General Provisions*. — (a) The additions to the tax or deficiency tax prescribed in this Chapter shall *apply to all taxes, fees and charges imposed in this Code*. The amount so added to the tax shall be collected at the same time, in the same manner and as part of the tax. . . .
>
> SECTION 248. *Civil Penalties*. — (a) There shall be imposed, *in addition to the tax required to be paid, penalty equivalent to twenty-five percent (25%) of the amount due*, in the following cases:
>
> xxx xxx xxx

(3) failure to pay the tax within the time prescribed for its payment; or

xxx xxx xxx

(c) the penalties imposed hereunder shall form part of the tax and the entire amount shall be subject to the interest prescribed in Section 249.

SECTION 249. *Interest.* — (a) *In General.* — There shall be assessed and collected *on any unpaid amount of tax, interest* at the rate of *twenty percent (20%) per annum* or *such higher rate as may be prescribed by regulations*, from the date prescribed for payment until the amount is fully paid. . . ..' (Emphases supplied)

In other words, Section 247 (a) of the current NIRC supplies what did not exist back in 1977 when Picop's liability for the thirty-five percent (35%) transaction tax became fixed. **We do not believe we can fill that legislative *lacuna* by judicial fiat. There is nothing to suggest that Section 247(a) of the present Tax Code, which was inserted in 1985, was intended to be given retroactive application by the legislative authority**. (underscoring and emphases supplied; citations omitted)

In fact, this Court *En Banc*, under the *ponencia* of J. Mindaro-Grulla in *Takenaka Corporation Philippine Branch v. CIR,*[2] relied upon the same *PICOP* holding to stress its position that the deficiency interest imposed under Section 249(B) of the 1997 NIRC does *not* apply merely to the deficiency income, deficiency estate and deficiency donor's tax by virtue of Section 247(a) of the same law. It reads:

"Anent the issue on the applicability of deficiency interest under Section 249(B) of the NIRC of 1997, as amended, only to deficiency income tax, deficiency estate tax, and deficiency donor's tax, as held by the Court a quo, petitioner asseverates that such an interpretation would result to absurd conclusions as it would mean triple imposition of 20% interest under Sections 249(A), 249(8), and 249(C) of the NIRC of 1997, simultaneously, effectively giving rise to at least 60% interest *per annum*.

We agree with petitioner. *Je*

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[2] CTA EB Case No. 745, September 4, 2012.

> The issue is no longer novel as the same was sufficiently discussed by the Supreme Court in *Paper Industries Corporation of the Philippines (PICOP) v. Court of Appeals, et al.* <u>The Supreme Court held that Section 247(a) of the NIRC of 1977, as amended **[now Section 247(a) of the NIRC of 1997, as amended]**, "very clearly embraces failure to pay all taxes imposed in the Tax Code, without any regard to the Title of the Code where provisions imposing particular taxes are textually located</u>." (emphases and underscoring supplied; citations omitted)

In sum, petitioner's deficiency EWT, WTC and VAT should be subject to deficiency interest as provided for under Section 249 of the 1997 NIRC.

Section 249(B) and (C) of the 1997 NIRC authorizes the simultaneous imposition of deficiency interest and delinquency interest.

The Court *En Banc* has consistently held that the plain reading of Section 249 of the 1997 NIRC justifies the simultaneous imposition of deficiency interest and delinquency interest.

Recently, in *Medicard Philippines, Inc. v. CIR*,[3] we held that there is no legal obstacle for the Court in Division to simultaneously impose the deficiency interest and the delinquency interest. Nowhere in Section 249 does it state that if subsection (B) on Deficiency Interest is applicable, subsection (C) on Delinquency Interest would be rendered inapplicable, or *vice versa*. Furthermore, there is no indication in the same Section 249 that the beginning of the imposition of delinquency interest under subsection (C) would end upon the imposition of deficiency interest under subsection (B), especially so where both subsections (B) and (C) provide that the interests shall respectively accrue upon full payment thereof.

In the same vein, *Avon Products Manufacturing, Incorporated v. CIR*[4] thoroughly discussed the legal bases and the reason for its position on this point, thus:

> "Petitioner submits that the Court in Division seriously erred in its simultaneous imposition of the deficiency interest and the delinquency interest upon the amounts payable by petitioner. The latter argues that deficiency interest and delinquency interest provided under Section 249 (B) and 249

[3] CTA EB No. 1224, September 2, 2015.
[4] CTA EB No. 1062, March 16, 2015.

(C) of the NIRC are not intended to be imposed simultaneously. Otherwise, it will amount to an interest that is excessive, iniquitous, unconscionable and exorbitant.

We do not agree with petitioner.

Section 249 of the NIRC of 1997 provides:

'SEC. 249. Interest. —

(A) In General. — There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) per annum, or such higher rate as may be prescribed by rules and regulations, from the date prescribed for payment until the amount is fully paid.

(B) Deficiency Interest. — Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.

(C) Delinquency Interest. — In case of failure to pay:

(1) The amount of the tax due on any return required to be filed, or

(2) The amount of the tax due for which no return is required, or

(3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax.

xxx xxx xxx.'

Interest is imposed to compensate the State for the delay in paying the tax and for the concomitant use by the taxpayer of funds that rightfully should be in the government's hands. 34 It is imposable upon failure of the taxpayer to pay the tax on the date fixed in the law for its payment.

In this case, by its own argumentation, petitioner stresses that the deficiency interest under subsection (B) of Section 249 is applicable where the taxpayer is found to have a tax deficiency. Since We find in this Decision that petitioner is liable to the deficiency excise tax assessed by respondent, there can be no doubt that petitioner is likewise liable to the deficiency interest imposed by the Court in Division.

Furthermore, We see no legal obstacle for the Court in Division to simultaneously impose the deficiency interest and the delinquency interest.

Nowhere in Section 249 does it state that if subsection (B) is applicable, subsection (C) would be rendered inapplicable, or *vice versa*. Furthermore, there is no indication in the same Section 249 that the beginning of the imposition of delinquency interest under subsection (C) would end upon the imposition of deficiency interest under subsection (B). Especially so that both subsection (B) and subsection (C) provide that the interests shall respectively accrue until full payment thereof.

It is a cardinal rule in statutory construction that no word, clause, sentence, provision or part of a statute shall be considered surplusage or superfluous, meaningless, void and insignificant. To this end, a construction which renders every word operative is preferred over that which makes some words idle and nugatory. This principle is expressed in the maxim *Ut magis valeat quam pereat*, that is, we choose the interpretation which gives effect to the whole of the statute — its every word. Thus, every word of Section 249 should be given effect."

I see no reason to deviate from the consistent holding of this Court.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PHILIPPINE AEROSPACE DEVELOPMENT CORPORATION, *Petitioner,*	**CTA EB No. 1035** (CTA Case No. 7830)
	Present:
- versus -	Del Rosario, *PJ,* Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Cotangco-Manalastas, and Ringpis-Liban, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: FEB 09 2016 2:45p.m.

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SEPARATE CONCURRING OPINION

COTANGCO-MANALASTAS, J.:

I concur with the resolution partially granting petitioner's *Motion for Reconsideration.* Nonetheless, I write this separate concurring opinion to underscore the basis of my concurrence with respect to the imposition of deficiency interest on deficiency value-added tax (VAT), expanded withholding tax (EWT) and withholding tax on compensation (WTC).

With due respect to my esteemed colleagues, Presiding Justice Ramon G. Del Rosario and Associate Justice Erlinda P. Uy, I do not agree with their position (as expressed in P.J. Del Rosario's *Dissenting Opinion*) that deficiency interest under Section 249(B) of the National Internal Revenue Code (NIRC) of 1997, as amended, should be applied only where there is deficiency income tax, deficiency estate tax and deficiency donor's tax.

Section 249(B) of the NIRC of 1997, as amended, provides as follows:

> "(B) *Deficiency Interest.* - Any deficiency in the tax due, **as the term is defined in this Code**, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof." (*Emphasis supplied*)

Considering that the term "deficiency" was defined in only three (3) types of internal revenue taxes: namely, income tax, estate tax and donor's tax pursuant to Sections 56(B), 93 and 104 of the NIRC of 1997, as amended, my esteemed colleagues are of the view that deficiency interest under Section 249(B) of the NIRC of 1997, as amended, should be applied only where there is deficiency income tax, deficiency estate tax and deficiency donor's tax.

I do not agree.

At the outset, Section 247 of the NIRC of 1997, as amended, provides that the additions (*i.e.*, surcharge, interest) to deficiency tax prescribed under Chapter I[1] (Additions to the Tax), Title X (Statutory Offenses and Penalties) are applicable to ***all taxes*** imposed under the Tax Code. Thus, the NIRC does not limit deficiency interest to only three (3) types of internal revenue taxes.

A reading of the definitions of the term "deficiency" found in Sections 56(B), 93 and 104 of the NIRC of 1997, as amended, shows that these definitions relate to how deficiency income, estate and donor's tax are computed, the relevant provisions are quoted hereunder:

> "**SECTION 56.** *Payment and Assessment of Income Tax for Individuals and Corporations.* —
>
> xxx xxx xxx
>
> (B) *Assessment and Payment of Deficiency Tax.* — After the return is filed, the Commissioner shall examine it and assess the correct amount of the tax. The tax or deficiency income tax so discovered shall be paid upon notice and demand from the Commissioner.

[1] Includes Sections 247-252 of the NIRC.

As used in this Chapter, in respect of a tax imposed by this Title, the term 'deficiency' means:

(1) The amount by which the tax imposed by this Title exceeds the amount shown as the tax by the taxpayer upon his return; but the amount so shown on the return shall be increased by the amounts previously assessed (or collected without assessment) as a deficiency, and decreased by the amount previously abated, credited, returned or otherwise repaid in respect of such tax; or

(2) If no amount is shown as the tax by the taxpayer upon his return, or if no return is made by the taxpayer, then the amount by which the tax exceeds the amounts previously assessed (or collected without assessment) as a deficiency; but such amounts previously assessed or collected without assessment shall first be decreased by the amounts previously abated, credited, returned or otherwise repaid in respect of such tax.

SECTION 93. *Definition of Deficiency.* — As used in this Chapter, the term 'deficiency' means:

(a) The amount by which the tax imposed by this Chapter exceeds the amount shown as the tax by the executor, administrator or any of the heirs upon his return; but the amount so shown on the return shall first be increased by the amounts previously assessed (or collected without assessment) as a deficiency and decreased by the amounts previously abated, refunded or otherwise repaid in respect of such tax; or

(b) If no amount is shown as the tax by the executor, administrator or any of the heirs upon his return, or if no return is made by the executor, administrator, or any heir, then the amount by which the tax exceeds the amounts previously assessed (or collected without assessment) as a deficiency; but such amounts previously assessed or collected without assessment shall first be decreased by the amounts previously abated, refunded or otherwise repaid in respect of such tax.

SECTION 104. *Definitions. — xxx*

The term 'deficiency' means: (a) the amount by which the tax imposed by this Chapter exceeds the amount shown as the tax by the donor upon his return; but the amount so shown on the return shall first be increased by the amount previously assessed (or collected without assessment) as a deficiency, and decreased by the amounts previously abated, refunded or otherwise repaid in respect of such tax, or (b) if no amount is shown as the tax by the donor, then the amount by which the tax exceeds the amounts previously assessed (or collected without assessment) as a deficiency,

> but such amount previously assessed, or collected without assessment, shall first be decreased by the amount previously abated, refunded or otherwise repaid in respect of such tax."

These definitions, which are similar for the three types of taxes, are basic and standard definition of "deficiency" which can likewise be adopted by analogy in defining "deficiency" as to other internal revenue taxes. Hence, I believe the phrase "[a]ny deficiency in the tax due, ***as the term is defined in this Code***" generally refers to deficiency tax that arises when the correct amount of tax due, as determined by the CIR, is more than the amount of tax shown in the taxpayer's return.

I described "deficiency" as one determined by the CIR because the word "deficiency" was used in Section 56(B) [under Chapter IX[2], Title II] as follows:

> "(B) *Assessment and Payment of Deficiency Tax.* -- After the return is filed, the **Commissioner shall examine it and assess the correct amount of the tax**. The tax or **deficiency** income tax **so discovered** shall be paid upon notice and demand from the Commissioner."

and in Section 92 (under Chapter I[3], Title III) as follows:

> "SECTION 92. *Discharge of Executor or Administrator from Personal Liability.* — xxx. The executor or administrator, upon payment of the amount of which he is notified, shall be discharged from personal liability for **any deficiency in the tax thereafter found to be due** and shall be entitled to a receipt or writing showing such discharge.

Notably, the word "deficiency" was not mentioned anywhere else in Chapter II (Donor's Tax) of Title III except when it was defined in Section 104.

Moreover, Section 6 of the NIRC of 1997, as amended, provides:

> "SECTION 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* —
>
> (A) *Examination of Returns and Determination of Tax Due.* — After a return has been filed as required under the provisions of this Code, the Commissioner or his duly

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[2] Returns and Payment of Tax.

[3] Estate Tax.

> authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax: *Provided, however,* That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
>
> The tax or any **deficiency** tax so assessed shall be paid upon notice and demand from the Commissioner or from his duly authorized representative. xxx

The Tax Code follows the pay-as-you-file system of taxation under which the taxpayer computes his own tax liability, prepares the return, and pays the tax as he files the return. The pay-as-you-file system is a self-assessing tax system.[4] Hence, after the return is filed (or even if no return is filed), the Bureau of Internal Revenue (BIR) will examine such return and will make a determination as to the correct amount of tax and make the corresponding assessment of deficiency tax, if any, found due from the taxpayer.

Hence, from the foregoing, it appears that "deficiency in the tax due" refers to deficiency as determined by the CIR. This distinction finds significance in determining whether interest is imposed under Section 249(A) or 249(B) of the NIRC of 1997, as amended.

Section 249(A) of the NIRC of 1997, as amended, provides:

> "(A) *In General.* — There shall be assessed and collected on **any unpaid amount of tax**, interest at the rate of twenty percent (20%) per annum, or such higher rate as may be prescribed by rules and regulations, **from the date prescribed for payment until the amount is fully paid.**"

Based on the above provision, Section 249(A) of the NIRC of 1997, as amended, applies to "any unpaid amount of tax" and interest would run "from the date prescribed for payment until the amount is fully paid" which is the same period provided in Section 249(B) of the NIRC of 1997, as amended.

Since "any unpaid amount of tax" is an all-encompassing phrase, it follows that deficiency tax also falls within that phrase since, basically, deficiency tax is unpaid tax. Hence, it is reasonable to conclude that generally, any unpaid tax is

[4] *PNOC vs. Court of Appeals*, G.R. No. 109976 and 112800, April 26, 2005.

subject to interest under Section 249(A) of the NIRC of 1997, as amended.

For example, a taxpayer filed his income tax return for taxable year 2003 and paid the income tax due as shown in his return (which was due for filing on April 15, 2004) only on May 30, 2004. Pursuant to Section 249(A) of the NIRC of 1997, as amended, the taxpayer is required to pay 20% interest p.a. from April 15, 2004 to May 30, 2004. However, if specifically, the unpaid amount of tax refers to "deficiency in the tax due", then Section 249(B) of the NIRC of 1997, as amended, applies.

From the foregoing, assuming *arguendo* that deficiency interest is not applicable to the other types of taxes because they are not considered "deficiency in the tax due, as the term is defined in this Code", then these other types of taxes will fall under Section 249(A) of the NIRC of 1997, as amended, since it applies to "any unpaid amount of tax", an all-encompassing phrase.

Also, if deficiency interest under Section 249(B) of the NIRC of 1997, as amended, is not applicable to internal revenue taxes other than income, estate and donor's tax, then a taxpayer that was issued a deficiency tax assessment (Final Assessment Notice/Formal Letter of Demand) would be placed in a better position than a taxpayer who was not yet issued a deficiency tax assessment. In the former case, the taxpayer with an assessment is not required to pay interest from the date prescribed for its payment until full payment while the latter who self-assessed his unpaid tax, would have to pay for the same.

For example, a taxpayer filed his VAT return for the 1st quarter of 2003 (calendar year) and paid the tax due thereon on April 25, 2003. Later on, he discovered that he underpaid his VAT due and hence, he filed an amended return on June 10, 2003 and paid the corresponding deficiency VAT. Pursuant to Section 249(A) of the NIRC of 1997, as amended, he has to pay for interest from April 25, 2003 to June 10, 2003. On the other hand, if another taxpayer was assessed by the BIR for deficiency VAT for the 1st quarter of 2003, based on the position expressed in the *Dissenting Opinion*, then, he will *not* be required to pay for deficiency interest under Section 249(B) of the NIRC of 1997, as amended, from April 25, 2003 until full payment.

Moreover, applying the argument that deficiency interest is only applicable for deficiencies that were defined in the NIRC, it would appear that "deficiency" exists only for these particular tax types (income tax, estate tax and donor's tax). Does that mean the BIR cannot assess a taxpayer for "deficiency" on taxes other than income, estate and donor's tax since the same were not defined in the NIRC? This could not have been the intention of Congress.

From all the foregoing, I am of the view that, the NIRC does not limit deficiency interest to deficiency income tax, deficiency estate tax and deficiency donor's tax only. Accordingly, deficiency interest was correctly imposed on petitioner's deficiency VAT, deficiency EWT and deficiency WTC for taxable year 2003.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice