REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

EURO-PHILIPPINES AIRLINE SERVICES, INC., Petitioner,	C.T.A. CASE NO. 8281
	Members:
	UY, *Chairperson and* FABON-VICTORINO, *JJ.*
-versus-	
	Promulgated:
COMMISSIONER OF INTERNAL REVENUE, Respondent.	JUL 25 2013 ; 2:00 p.m.

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DECISION

Fabon-Victorino, J.:

Petitioner **Euro-Philippines Airline Services, Inc.** (Euro-Phil) filed this Petition for Review praying for the cancellation of the Formal Assessment Notice (FAN) issued by respondent Commissioner of Internal Revenue (CIR) for deficiency income tax (IT), value-added tax (VAT), withholding tax on compensation (WTC) and documentary stamp tax (DST), inclusive of interest and surcharge, in the aggregate amount of ₱4,271,228.20, for the taxable year ending March 31, 2007.

STATEMENT OF FACTS

Petitioner is a domestic corporation with office address at 4th Floor, Filipino Building, 135 Dela Rosa Street, Legaspi Village, Makati City.[1] It is an exclusive passenger sales

[1] Par. 1, Facts Admitted, Joint Stipulation of Facts and Issues (JSFI), docket, p. 85.

agent of British Airways PLC, an off-line international airline in the Philippines to service the latter's passengers in the Philippines.[2]

Respondent, on the other hand, is the Commissioner of the Bureau of Internal Revenue (BIR) empowered to issue and cancel assessments of internal revenue taxes. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On September 14, 2010, petitioner received a FAN dated September 13, 2010 from respondent with Details of Discrepancies together with Assessment No. IT-LA69595-FY07-10-0455 for income tax, Assessment No. VT-LA69595-FY07-10-0455 for VAT, Assessment No. WC-LA69595-FY07-10-0455 for withholding tax on compensation, and Assessment No. DS-LA69595-FY07-10-0455[3] for documentary stamp tax, inclusive of surcharge and interest, for taxable year ending March 31, 2007, in the aggregate amount of ₱4,271,228.20, summarized as follows:[4]

PARTICULARS	BASIC TAX	INTEREST	SURCHARGE	TOTAL
Income Tax	₱ 189,970.49	₱ 123,558.89		₱ 313,529.38
VAT	2,179,970.85	1,515,064.95		3,695,035.80
Withholding Tax-Compensation	131,568.14	92,494.20		224,062.34
DST	17,500.00	12,350.68	8,750.00	38,600.68
TOTAL	**₱2,519,009.48**	**₱1,743,468.72**	**₱8,750.00**	**₱4,271,228.20**

The FAN and the supporting computation sheets showed the following computations:[5]

a) Income Tax

Net Income, per return		₱6,684,313.77
Add: Disallowed salaries and wages due to Non-withholding (Schedule 1)		542,772.84
Net Income, per audit		7,227,086.61

[2] Exhibits "H", "I", and "J".
[3] Paragraph 3, Facts Admitted, JSFI, docket, p. 86; Exhibits "A" to "A-5".
[4] Paragraph 4, Facts Admitted, JSFI, docket, p. 86.
[5] Paragraphs 8 to 11, Facts Admitted, JSFI, docket, pp. 88-89.

Income Tax Due (35%)		2,529,480.31
Less: Tax Payments/Credits:		
Prior Year's Excess Credits	₱ 299,095.93	
Creditable Withholding Tax per BIR Form 2307	1,928,654.59	
Tax Paid	111,759.30	2,339,509.82
Basic Tax Due		189,970.49
Interest (7-16-07 to 10-15-10)		123,558.89
Total Amount Due		**₱313,529.38**

b) Withholding Tax on Compensation

Compensation & Benefits per FS/ITR		₱8,228,025.00
Less: Total Compensation per BIR Form No.1601-C		7,685,252.16
Disallowed salaries and wages for non-withholding		542,772.84
Withholding tax ratio		
Withholding Tax paid per return	₱1,862,618.89	
Gross Compensation per return	7,685,252.16	24.24%
Withholding Tax on Compensation still due		131,568.14
Interest (4-11-07 to 04-12-10)		92,494.20
Total Withholding Tax on Compensation Due		**₱224,062.34**

c) Value-added Tax and Interest

Taxable Receipts per VAT returns		₱ 8,746.51
Add: Receipts not subjected to VAT (Schedule 2)		20,876,935.16
Total VATable Receipts per Investigation		20,885,681.67
Output Tax Due (Schedule 4)		2,506,281.80
Less: Tax Credits/Payments		
Input Tax Carried-Over from Previous Year	₱ 182,654.70	
Allowable Input Tax per Audit	143,032.83	
VAT Payment	623.42	326,310.95
Basic Tax Due		2,179,970.85
Add: Interest (4-26-07 to 10-15-10)		1,515,064.95
Total Amount Due		**₱3,695,035.80**

d) Documentary Stamp Tax, Surcharge and Interest

Assignment of Certificate of Time Deposit (Sec. 198 in relation to Sec. 179 of NIRC)	₱ 3,500,000.00
Tax Rate	1/200
DST Due	17,500.00
50% Surcharge	8,750.00
Interest (04-06-07 to 10-15-10)	12,350.68
Total Amount Due	**₱ 38,600.68**

Respondent disallowed petitioner's salaries and wages expense in the amount of ₱542,772.84 for failure of petitioner to withhold the corresponding withholding tax thereon and to remit the same to the BIR.[6] In addition, the commission and miscellaneous income received by the local sales agents from their foreign principals are subject to VAT.[7]

On September 29, 2010, petitioner filed with respondent its protest together with supporting documents, signed by its President/General Manager Violeta D. Echevarria and received by respondent through the Regional Director of Revenue Region No. 8-Makati.[8]

Petitioner raised the following grounds in its protest:

1. The deficiency income tax, which was brought about by the alleged failure to withhold tax on compensation, had no legal basis because the income from which taxes were supposedly not withheld actually represented employer's contribution to SSS, Philhealth, HDMF, Employees Compensation and other employee benefits, such as medical, dental, HMO premiums and rice subsidy, which are not considered compensation subject to withholding tax. Accordingly, the said "salaries and wages" should not have been disallowed and subjected to income tax;

2. The receipts that are supposedly subject to 12% VAT actually pertained to "services rendered to persons engaged exclusively in international air transport" hence, zero-rated; and

3. The assignment of a certificate of time deposit is not subject to documentary stamp tax. [9]

Respondent failed to act on petitioner's protest within the required 180-day period within which to resolve the

[6] Paragraph 16, Facts Admitted, JSFI, docket, p. 90.
[7] Paragraph 17, Facts Admitted, JSFI, docket, p. 91.
[8] Paragraph 13, Facts Admitted, JSFI, docket, p. 87; Exhibit "B".
[9] Paragraph 12, Facts Admitted, JSFI, docket, pp. 89 to 90.

protest.[10] Hence, this Petition for Review filed on April 20, 2011.

In her Answer posted on June 28, 2011[11], respondent raised the following Special and Affirmative Defenses:

4. The assessments in question were made and issued in accordance with law, rules and regulations;

5. Respondent disallowed petitioner's salaries and wages expense in the amount of ₱542,772.84 for failure of the petitioner to withhold the corresponding withholding tax thereon and remit the same to the BIR.

6. Commission and miscellaneous income received by the local sales agents from their foreign principals are subject to VAT. Thus, petitioner's receipts in the total amount of ₱20,876,935.16 from British Airways PLC is subject to 12% VAT.

7. The deficiency withholding tax on compensation in the amount of ₱131,568.14 arose from petitioner's failure to withhold the corresponding withholding tax on the salaries and wages expense in the amount of ₱542,772.84.

8. The assignment of Certificate of Time Deposit is subject to documentary stamp tax (DST) as provided for under Section 198 of the 1997 Tax Code, as amended.

9. All presumptions are in favor of the correctness of the tax assessment

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[10] Paragraph 14, Facts Admitted, JSFI, docket, p. 90.
[11] Docket, pp. 51-52.

(Interprovincial Autobus vs. Collector of Internal Revenue, 98 Phil. 290).

On September 6, [12] and 7, [13] 2011, the parties filed their respective Pre-Trial Briefs. Thereafter, they filed their Joint Stipulation of Facts & Issues,[14] which was approved on October 6, 2011.[15]

To prove its case, petitioner presented its Finance Manager, Marie B. Dino; the Court Commissioned Independent Certified Public Accountant (ICPA), Dominador Homer G. Dumaraos and its Independent Auditor and Tax Consultant, Moises Visperas Jr.

Marie B. Dino executed a Judicial Affidavit[16] for her direct examination in which she declared that as a Finance Manager she prepares petitioner's tax returns and other required reports, pay the corresponding taxes thereon and remit to the government the required contributions for both employer and employee.

Petitioner is the exclusive passenger sales agent of British Airways PLC authorized by the Civil Aeronautics Board (CAB)[17] to operate in the Philippines to service the latter's passengers in the Philippines.[18]

Petitioner received a copy of the FAN dated September 14, 2010, assessing it for deficiency IT, VAT, WTC, and DST in the respective amounts of P313,529.38, P3,695,035.80, P224,062.34, P38,600.68, or in the total amount of P4,271,228.20. After receipt thereof, she, assisted by petitioner's President/General Manager Violeta D. Echevarria and External Auditor Moises Visperas, Jr., reviewed the assessment and prepared a Protest Letter sent to the BIR on September 29, 2010.

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[12] Petitioner's Pre-Trial Brief, docket, pp. 62-69.
[13] Respondent's Pre-Trial Brief, docket, pp. 70-75.
[14] Docket, pp. 85-94.
[15] Docket, pp. 96-97.
[16] Exhibits "K" and "K-1", docket, pp. 130-137.
[17] Exhibits "E". "F", "G" to "G-3".
[18] Exhibits "H", "I" and "J"

According to the witness, petitioner is not liable for the deficiency assessments issued by respondent. As to deficiency WTC, petitioner's contributions to SSS, Philhealth, HDMF, Employees Compensation and other employee benefits such as medical, dental, HMO premiums and rice subsidy are not considered as compensation subject to withholding tax. And since the assessment for alleged deficiency income tax stemmed from the denial of the certain expenses due to alleged failure to withhold taxes on contributions to government agencies, it follows that the assessment for deficiency income tax should also be declared invalid.

About the claimed VAT deficiency, she invoked Republic Act (R.A.) No. 9337, as implemented by Revenue Memorandum Circular (RMC) No. 46-2008, which provides that "services rendered to persons engaged exclusively in international air transport operations is zero-rated". Relevantly, RMC No. 46-2008 does not mention commission income which petitioner received from British Airways PLC as compensation for services it rendered for the latter's passenger requirements, which includes ticketing, booking and refunds.

Anent the DST assessment, there is nothing in Section 198 of the NIRC that states that assignment of a certificate of time deposit is subject to DST.

In addition, the witness clarified that she is an employee of petitioner and not of British Airways PLC. She was not privy to the preparation, execution and signing of the three (3) agreements between the two.

Witness Dominador Homer G. Dumaraos testified that as Court-commissioned ICPA, he reviewed and verified pertinent records and documents of petitioner in relation to the assessments issued against it by respondent Per his audit, the amount of P542,772.34 included in the compensation and other benefits account for the period ending March 31, 2007 was fairly stated.[19]

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[19] Exhibits "L" and "L-1".

The testimony[20] of petitioner's Tax Consultant Moises Visperas Jr. is basically in corroboration with that of first witness Marie B. Dino. He is also of the opinion that respondent erred in considering the difference between petitioner's compensation and benefits account total in its Financial Statement vis-à-vis the amount indicated in the BIR Form 1601-C as petitioner's deficiency WTC. The difference was due to the fact that petitioner adopted the Philippine Financial Reporting Standards (PFRS) in the preparation of its Financial Statement for the year 2007.[21] As part of his job, he prepared all the necessary documents pertaining to the accounts involved and assisted in the drafting of petitioner's Protest Letter sent to the BIR on September 29, 2010.[22]

He also testified that all compensation and benefits under the PFRS are lumped in one account in the Financial Statement, which includes not only salaries and wages but also employer's share in benefits provided to employees. Since petitioner started adopting the said reporting standard on petitioner's financial statement for the year ending March 31, 2006, it created a discrepancy between the figures reflected in petitioner's financial statement and BIR Form 1601-C given that the employer's share in SSS, Philhealth, HDMF and other employee benefits were not included in BIR Form 1601-C.

Just as Dino, he was not a signatory or a party to the agreements between petitioner and British Airways PLC, nor a custodian of the registration of British Airways PLC issued by the SEC.

In a Resolution dated May 21, 2012, the Court admitted all the documentary exhibits formally offered by petitioner on April 13, 2012.[23]

On July 17, 2012, respondent manifested that she will no longer present any witness and submits the case for decision.[24]

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[20] Exhibit "TTTTT" – Judicial Affidavit
[21] Exhibit "D".
[22] Exhibit "B".
[23] Docket, p. 729.

Only petitioner filed a Memorandum[25] on September 20, 2012. Despite the Court's directive, respondent did not.

The parties submitted the following issues for the resolution of the Court:[26]

1. Whether or not the disputed assessment of the respondent against the petitioner for alleged deficiency income tax, value added tax, withholding tax on compensation and documentary stamp tax is legally correct;

2. Whether or not respondent's disallowance of petitioner's salaries and wages expense in the amount of P542,772.84 is valid;

3. Whether or not the commission and miscellaneous income received by petitioner from its foreign principal is subject to VAT;

4. Whether or not the assignment of Certificate of Time Deposit is subject to documentary stamp tax (DST) under Section 198 of the 1997 Tax Code, as amended.

The foregoing issues may however be summed up to one, to wit:

> WHETHER THE SUBJECT ASSESSMENTS FOR ALLEGED DEFICIENCY INCOME TAX, VAT, WITHHOLDING TAX ON COMPENSATION, AND DST, INCLUSIVE OF INTEREST AND SURCHARGE, IN THE AGGREGATE AMOUNT OF ₱4,271,228.20,

[24] Minutes of the Hearing dated July 17, 2012.
[25] Docket, pp. 750-777.
[26] No. II, Issues to be Tried or Resolved, JSFI, docket, p. 91.

COVERING TAXABLE YEAR ENDING MARCH 31, 2007 IS INVALID AS TO JUSTIFY ITS NULLIFICATION AND CANCELLATION PRAYED FOR BY PETITIONER.

Petitioner's Arguments:

Petitioner claims that the assessment for deficiency withholding tax on compensation is not valid since the employer's contribution to SSS, Philhealth, HDMF, Employees Compensation and other employee benefits, particularly, medical, dental, HMO premiums, and rice subsidy are not considered compensation subject to withholding tax as provided under Section 32(B)(7)(f) of the NIRC of 1997, as amended. Moreover, payments for medical, HMO premiums and rice subsidy are ordinary and necessary expenses, hence, considered as *de minimis* benefits not subject to income and withholding taxes. However, under the PFRS, all compensation and benefits, which include not only salaries and wages but also employer's share in SSS, Philhealth, HDMF and other benefits for medical and other benefits to staff, are lumped in one account in the Financial Statements (FS) for presentation purposes.

Petitioner also denies liability to deficiency VAT as the receipts which were supposedly subjected to 12% VAT actually pertained to "services rendered to persons engaged exclusively in international air transport", thus zero-rated pursuant to Revenue Memorandum Circular (RMC) No. 46-2008.

Finally, the assignment of the certificate of time deposit is not subject to DST since upon its issuance and subsequent renewal, the DST is paid by the bank, and subsequently debited from petitioner's account in accordance with Section 179 of the NIRC of 1997, as amended. Also the absence of an express reference to deed of assignment of certificate of time deposit as subject to DST, the deed of assignment of certificate of time deposit is not subject to tax.

Respondent's Arguments:

Respondent counters that she disallowed petitioner's salaries and wages expense of ₱542,772.84 for the latter's failure to withhold the corresponding withholding tax thereon and remit the same to the BIR. This amount was derived by comparing the compensation and benefits account per FS/ITR amounting to ₱8,228,025.00 against the compensation per BIR Form No. 1601-C amounting to ₱7,685,252.16.

With respect to her VAT assessment issued against petitioner, the commission and miscellaneous income received by the local sales agents from their foreign principals are subject to VAT. Consequently, petitioner's receipts in the total amount of ₱20,876,935.16 from British Airways PLC is subject to 12% VAT.

Respondent's reiterates that pursuant to Section 198, in relation to Section 179 of the NIRC of 1997, as amended, petitioner is liable for deficiency DST in the amount of ₱38,600.68 on the assignment of certificate of time deposit.

The Ruling of the Court

The petition is partly meritorious.

1) INCOME TAX AND WITHHOLDING TAX ON COMPENSATION

The compensation amounting to ₱542,772.84 allegedly not subject to withholding tax may be broken down as follows:[27]

SSS, PHIC and HDMF employer's contribution	₱ 186,008.20
Medical Insurance Premium Expense	167,082.24

[27] Exhibit "L"

Staff Cost	158,591.14
Medical Expenses	39,690.80
Maternity Benefit (Unsupported)	(8,600.04)
TOTAL	**₱542,772.34**[28]

A. SSS, PHIC, and HDMF employer's contribution

Insofar as petitioner's contribution to SSS, Philhealth, HDMF, Employees Compensation, the relevant provision is Section 32(B)(7)(f) of the NIRC of 1997, as amended, as implemented by Section 2.78.1(B)(12) of Revenue Regulations (RR) No. 2-98, to wit:

> SEC. 32. *Gross Income.* -
>
> xxx xxx xxx
>
> (B) ***Exclusions from Gross Income.*** - The following items **shall not be included in gross income and shall be exempt from taxation under this Title**:
>
> xxx xxx xxx
>
> (7) *Miscellaneous Items.* –
> xxx xxx xxx
>
> (f) *GSIS, SSS, Medicare and Other Contributions.* - GSIS, **SSS, Medicare and Pag-Ibig contributions**, and union dues of individuals. *(Emphasis supplied)*
>
> SECTION 2.78.1. *Withholding of Income Tax on Compensation Income.* -
>
> xxx xxx xxx

[28] .50 rounding off difference.

> (B) ***Exemptions from withholding tax on compensation.*** - The following income payments are exempted from the requirement of withholding tax on compensation:
>
> xxx xxx xxx
>
> (12) *GSIS,* ***SSS, Medicare and other contributions.*** - GSIS, SSS, Medicare and Pag-ibig contributions, and union dues of individual employees. *(Emphasis supplied)*

In support of its allegation, petitioner submitted machine validated official receipts as proof of payment/remittance to SSS, PHIC and HDMF, as detailed below:

	Period	**Exhibit**	**Monthly Remittance**	**Exhibit**	**Employee Share**	**Employer Share**
SSS						
	April 2006	M	₱ 18,272.00	R-4	₱ 6,433.30	₱ 11,838.70
	May 2006	M-3	18,272.00	R-11	6,433.30	11,838.70
	June 2006	M-5	18,272.00	R-48	6,433.30	11,838.70
	July 2006	M-7	18,272.00	R-56	6,433.30	11,838.70
	August 2006	M-9	16,852.00	R-76	5,933.30	10,918.70
	September 2006	M-11	16,852.00	R-83	5,933.30	10,918.70
	October 2006	M-13	16,993.00	R-86	5,983.30	11,009.70
	November 2006	M-15	16,993.00	R-102	5,983.30	11,009.70
	December 2006	M-17	16,993.00	R-113	5,983.30	11,009.70
	January 2007	M-19	19,008.00	R-131	5,983.30	13,024.70
	February 2007	M-21	19,008.00	R-139	5,983.30	13,024.70
	March 2007	M-24	19,008.00	R-149	5,983.30	13,024.70
	JVO960031		(19,008.00)		(5,983.30)	(13,024.70)
			₱ 195,787.00		**₱ 67,516.30**	**₱ 128,270.70**
Philhealth						
	April 2006	N	₱ 7,250.00		₱ 3,625.00	₱ 3,625.00
	May 2006	N-1	7,250.00	N-3	3,625.00	3,625.00
	June 2006	N-2	7,250.00		3,625.00	3,625.00
	July 2006	N-4	7,250.00	N-7	3,625.00	3,625.00
	August 2006	N-5	6,650.00		3,325.00	3,325.00

	September 2006	N-6	6,650.00		3,325.00	3,325.00
	October 2006	N-8	6,750.00		3,375.00	3,375.00
	November 2006	N-9	6,750.00	N-9	3,375.00	3,375.00
	December 2006	N-10	6,750.00		3,375.00	3,375.00
	January 2007	N-12	7,775.00		3,887.50	3,887.50
	February 2007	N-13	7,775.00	N-15	3,887.50	3,887.50
	March 2007	N-14	7,775.00		3,887.50	3,887.50
			₱ 85,875.00		**₱ 42,937.50**	**₱ 42,937.50**
HDMF						
	April 2006	O	₱ 2,600.00	O-1	₱ 1,300.00	₱ 1,300.00
	May 2006	O-2	2,600.00	O-3	1,300.00	1,300.00
	June 2006	O-4	2,600.00	O-5	1,300.00	1,300.00
	July 2006	O-6	2,600.00	O-7	1,300.00	1,300.00
	August 2006	O-8	2,400.00	O-9	1,200.00	1,200.00
	September 2006	O-10	2,400.00	O-11	1,200.00	1,200.00
	October 2006	O-12	2,400.00	O-13	1,200.00	1,200.00
	November 2006	O-14	2,400.00	O-15	1,200.00	1,200.00
	December 2006	O-16	2,400.00	O-17	1,200.00	1,200.00
	January 2007	O-18	2,400.00	O-19	1,200.00	1,200.00
	February 2007	O-20	2,400.00	O-21	1,200.00	1,200.00
	March 2007	O-22	2,400.00	O-23	1,200.00	1,200.00
			₱ 29,600.00		**₱ 14,800.00**	**₱ 14,800.00**
TOTAL			**₱ 311,262.00**		**₱ 125,253.80**	**₱ 186,008.20**

Petitioner is therefore correct that its share in the SSS, Medicare, and Pag-ibig contributions for the benefit of its employees in the sum of ₱186,008.20 are exempt from the requirement of withholding tax on compensation.

A. Medical Insurance Premium Expense

As regards the Medical Insurance Premium Expense of petitioner amounting to ₱167,082.24, Section 34(M) of the NIRC of 1997, as amended, provides:

> CHAPTER VII - ALLOWABLE DEDUCTIONS
>
> SEC. 34. *Deductions from Gross Income*. - Except for taxpayers earning compensation income arising from personal

> services rendered under an employer-employee relationship where no deductions shall be allowed under this Section other than under Subsection (M) hereof, in computing taxable income subject to income tax under Sections 24(A); 25(A); 26; 27(A), (B) and (C); and 28(A)(1), there shall be allowed the following deductions from gross income:
>
> xxx xxx xxx
>
> (M) *Premium Payments on Health and/or Hospitalization Insurance of an Individual Taxpayer*. - The amount of premiums not to exceed Two thousand four hundred pesos (P2,400) per family or Two hundred pesos (P200) a month paid during the taxable year for health and/or hospitalization insurance taken by the taxpayer for himself, including his family, shall be allowed as a deduction from his gross income: *Provided*, That said family has a gross income of not more than Two hundred fifty thousand pesos (P250,000) for the taxable year: *Provided, finally*, That in the case of married taxpayers, only the spouse claiming the additional exemption for dependents shall be entitled to this deduction.

Evident from the foregoing that premium payment on health and/or hospitalization insurance of an **individual taxpayer** up to ₱2,400.00 per family is an allowable deduction from taxable gross income, subject to specific conditions mentioned in Section 34(M) of NIRC of 1997, as amended. Thus, payments made by an employer for the benefit of its employees will not be considered taxable income, provided that the conditions mentioned in Section 34(M) of NIRC of 1997, as amended, are met; otherwise, the payments will be subject to withholding tax on compensation.

In addition, Revenue Regulation (R.R.) Nos. 2-98 and 3-98, as amended by RR Nos. 8-2000 and 10-2000,[29] provides, among others, exemptions from income tax and withholding tax on compensation of ***de minimis*** benefits received by individual taxpayers from their employers. In particular, Section 2.78.1(A)(3) of RR No. 2-98, in relation to Section 32(B) of the NIRC of 1997, as amended, enumerates the income payments exempted from withholding tax on compensation. However, there was no mention of medical insurance premium paid by the employer

The pertinent provisions Section 2.78.1(A)(3) of RR No. 2-98 are quoted below:

> SECTION 1. Section 2.78.1(A)(3), (6)(b)(ii) and (7) of Revenue Regulations No. 2-98, as last amended by Revenue Regulations No. 8-2000, is hereby further amended to read as follows:
>
> Sec. 2.78.1. *Withholding of Income Tax on Compensation Income. -*
>
> (A) xxx
>
> (3) *Facilities and privileges of relatively small value. -*
>
> xxx xxx xxx
>
> **The following shall be considered as *'de minimis'* benefits not subject to *INCOME TAX AS WELL AS* withholding tax on compensation income of both managerial and rank and file employees**:
>
> (a) Monetized unused vacation leave credits of *PRIVATE* employees not exceeding ten (10) days during the year

[29] Revenue Regulation prevailing during the material dates of this case.

AND THE MONETIZED VALUE OF LEAVE CREDITS PAID TO GOVERNMENT OFFICIALS AND EMPLOYEES;

(b) Medical cash allowance to dependents of employees not exceeding ₱750.00 per employee per semester or ₱125 per month;

(c) **Rice subsidy of ₱1,000.00 or one (1) sack of 50-kg. rice per month amounting to not more than ₱1,000.00**;

(d) Uniform and clothing allowance not exceeding ₱3,000 per annum;

(e) **Actual yearly medical benefits not exceeding ₱10,000 per annum**;

(f) Laundry allowance not exceeding ₱300 per month;

(g) Employees achievement awards, e.g., for length of service or safety achievement, which must be in the form of a tangible personal property other than cash or gift certificate, with an annual monetary value not exceeding ₱10,000 received by the employee under an established written plan which does not discriminate in favor of highly paid employees;

(h) Gifts given during Christmas and major anniversary celebrations not exceeding ₱5,000 per employee per annum;

(i) Flowers, fruits, books, or similar items given to employees under special circumstances, e.g., on account of illness, marriage, birth of a baby, etc., and

> (j) Daily meal allowance for overtime work not exceeding twenty five percent (25%) of the basic minimum wage. *(Emphasis supplied)*

Therefore, for the medical insurance premium expenses to be deemed as *de minimis* benefits exempt from fringe benefit tax, income tax, and withholding tax on compensation, the following conditions must be satisfied: (1) they must be furnished by the employer to his employees, both managerial and rank and file; (2) they do not exceed ₱10,000.00 per annum; and (3) they must be actually used or utilized for medical reasons.

Rice subsidy of ₱1,000.00 or one (1) sack of 50-kg. rice per month of not more than ₱1,000.00, actual yearly medical benefits not exceeding ₱10,000 per annum and daily meal allowance for overtime work not exceeding twenty-five percent (25%) of the basic minimum wage are likewise considered as *de minimis* benefits not subject to income tax and withholding tax on compensation of both managerial and rank and file employees.

To prove its claim, petitioner submitted its check vouchers and official receipts from its health insurance provider, to wit:

Date	Payee	Particulars	OR#	Amount	Exhibit
6/21/2006	Interbroker Insurance, Inc.	1st Semi Annual Payment	27636	₱ 83,541.12	"Q-1"
12/11/2006	Interbroker Insurance, Inc.	2st Semi Annual Payment	28066	83,541.12	"Q-5"
TOTAL				₱167,082.24	

There is however no clear and complete indication that the amount was exclusively utilized by its employees for their medical needs, as the names of the employees who benefited from such payments were not reflected or attached therein.

Besides, to determine the actual medical benefits furnished by the employer, the employee must fully substantiate with official receipts in his name the medical insurance premium so granted, on or before the annualization of withholding taxes in any given calendar year, to determine if the medical insurance premium conforms to the ceiling amount prescribed by the regulations. If the employer pays more than the ceiling prescribed by the Regulations, the excess shall be taxable to the employee receiving the benefits, if such excess is beyond the ₱30,000.00 ceiling of "Other Benefits" provided under Section 2.78.1(B)(11) of RR No. 2-98, in relation to Section 32(B)(7)(e) of the NIRC of 1997, as amended.

Considering that there is no clear showing that the alleged medical insurance premium of ₱167,082.24 refers to the medical benefits considered as *de minimis* benefits contemplated under RR No. 2-98, as amended by RR No. 10-2000, and that petitioner met the conditions under Section 34(M) of the NIRC of 1997, as amended, the same shall be considered as compensation subject to income tax and consequently, to withholding tax.

B. Staff Cost and Medical Expenses

With respect to the item medical and staff expenses in the amounts of ₱158,591.14 and ₱39,690.80, respectively, record shows that these pertain to medical allowances, rice subsidy and meals for staff which were considered *de minimis* benefits not subject to income tax and withholding tax on compensation, except for the following in the total amount of ₱49,036.63:

Employee Name (Claimant)	Particulars	Reference	Amount
Not properly receipted in the name of the employee/company			
Leticia Carlos	medicines	P-15	₱ 203.95
Leticia Carlos	medicines	P-17	897.75
Leticia Carlos	medicines	P-18	94.00
Violeta Echeverria	medicines	P-27	181.25
Violeta Echeverria	medicines	P-28	181.25
Regina Garcia	medicines for office	P-30	299.25

Regina Garcia	medicines	P-38	495.00
Leticia Carlos	medicines	P-42	2,190.35
Marisa Saavedra	medicines	P-45	233.10
Regina Garcia	salonpas	P-47	35.75
Patricia Marie Pascual	medicines	P-49	215.50
Patricia Marie Pascual	medicines	P-52	453.75
Patricia Marie Pascual	medicines	P-53	647.50
Patricia Marie Pascual	medicines	P-54	556.50
	medicines for office	P-56	53.05
Y. Ranola	medicines	P-58	20.40
Y. Ranola	medicines	P-59	204.00
Y. Ranola	medicines	P-60	153.00
Y. Ranola	medicines	P-61	278.50
Y. Ranola	medicines	P-62	105.20
Y. Ranola	medicines	P-63	153.00
Y. Ranola	medicines	P-64	38.00
Regina Garcia	medicines for office	P-66	563.00
Patricia Marie Pascual	medicines	P-69	189.25
Patricia Marie Pascual	medicines	P-70	1,107.25
Patricia Marie Pascual	medicines	P-71	378.50
Marisa Saavedra	medicines	P-73	278.50
Y. Ranola	medicines	P-75	575.00
Y. Ranola	medicines	P-76	26.00
Y. Ranola	medicines	P-77	76.00
Y. Ranola	medicines	P-78	286.20
Patricia Marie Pascual	medicines	P-83	1,449.00
Patricia Marie Pascual	medicines	P-84	1,970.55
Y. Ranola	medicines	P-86	464.00
Regina Garcia	medicines for office	P-88	431.00
	medicines	P-94	900.00
Y. Ranola	medicines	P-96	51.00
Y. Ranola	medicines	P-97	441.00
Y. Ranola	medicines	P-98	105.00
Y. Ranola	medicines	P-99	291.25
Patricia Marie Pascual	medicines	P-102	1,942.50
Anne Lorraine Famatigan	medicines	P-111	341.50
Marisa Saavedra	medicines	P-113	1,086.75
Regina Garcia	medicines	P-115	144.25
	medicines	P-117	692.25
	medicines	P-118	316.80
Marie Dino	supplies for office outing	R-15	107.50
Marie Dino	supplies for office outing	R-16	548.75
Marie Dino	supplies for office outing	R-17	2,528.50
Natalie Puey	visine	R-21	66.30
Regina Garcia	staff lunch	R-25	538.00
Manila North Tollways	toll fee	R-37	53.00
Manila North Tollways	toll fee	R-38/39	732.00

Manila North Tollways	toll fee	R-40	53.00
Jollibee	office outing (breakfast)	R-41	76.00
Jollibee	office outing (breakfast)	R-43	83.00
Jollibee	office outing (breakfast)	R-44	1,043.00
Ocean Adventure	entrance fee	R-45	450.00
Ocean Adventure	entrance fee	R-46	450.00
SM Supermarket (outing)	supplies for office outing	R-51	1,243.10
Regina Garcia	Coffee Supplies	R-59	525.75
Regina Garcia	Coffee Supplies	R-60	1,028.00
Regina Garcia	Coffee Supplies	R-67	280.20
	Supplies	R-107	822.05
	Softdrinks for Christmas lunch	R-109	131.25
Marie Dino	DLC Foods	R-118	500.00
Marie Dino	ice for Christmas Lunch	R-119	33.00
Anne Lorraine Famatigan	optical expense	R-122	260.00
Regina Garcia	Office Supplies	R-144	269.70
Patricia Pascual	medicines	R-159	1,089.70
Regina Garcia	Coffee Supplies	R-166	833.40
Subtotal			**₱ 35,541.80**
OR with Incomplete Date			
Marie Dino	ultrasound fee	P-24	1,390.00
Subtotal			**1,390.00**
Without valid supporting documents			
Leticia Carlos	medicines	P-14	704.30
Marie Dino	Tip to Porter (outing)	R-14	20.00
Marie Dino	Tip-Seafood by the Bay	R-29	72.50
Marie Dino	Tip-Dencio's	R-29	97.00
Marie Dino	entrance fee to Ocean Adventure	R-29	4,950.00
Marie Dino	drinking water	R-29	120.00
Marie Dino	Meal for the driver	R-29	500.00
Tip-Pancake	Tip - Pancake House (office outing - breakfast)	R-42	86.04
Lor Go Ang	dental	R-68	3,206.00
Regina Garcia	staff lunch	R-80	1,577.00
	Crystal cases for cellphones	R-93	500.00
Regina Garcia	Lunch - staff	R-96	72.50
Regina Garcia	Lunch- Maggie	R-104	267.00
	Coffee Supplies		413.60
	Write-off of Input tax		1,468.89

	Cancelled Check		(1,950.00)
Subtotal			**₱ 12,104.83**
Grand Total			**₱ 49,036.63**

For petitioner's failure to duly substantiate the amount of ₱49,036.63, the same shall be subject to income tax and consequently to withholding tax on compensation.

In fine, petitioner is liable to pay basic deficiency income tax and withholding tax on compensation amounting to ₱75,641.60 and ₱52,387.21, respectively, as follows:

Deficiency Income Tax	
Medical Insurance Premium Expense	₱ 167,082.24
Staff Cost and Medical Expense	49,036.63
Total Disallowed Salaries & Wages Expense	**₱216,118.87**
x Income Tax Rate	35%
Basic Deficiency Income Tax Due	**₱ 75,641.60**
Deficiency Withholding Tax on Compensation	
Total Disallowed Salaries & Wages Expense	₱ 216,118.87
x Rate of Withholding Tax	24.24%[30]
Basic Deficiency Withholding Tax Due	**₱ 52,387.21**

II. VALUE-ADDED TAX

Section 108 of the NIRC of 1997, as amended, provides that services rendered by VAT-registered persons to persons engaged in international air transport operations shall be subject to zero percent rate, to wit:

SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties. –*

xxx xxx xxx

[30] Tax Rate used by the BIR as per FAN, Details of Discrepancy, Exhibit "A-1", docket, p. 532.

> (B) *Transactions Subject to Zero Percent (0%) Rate.* - **The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate**:
>
> xxx xxx xxx
>
> (4) **Services rendered to persons engaged in** international shipping or **international air transport operations**, including leases of property for use thereof; *(Emphasis supplied)*

Revenue Memorandum Circular (RMC) No. 46-2008[31] issued to clarify certain provisions of the National Internal Revenue Code of 1997, as amended, further provides:

> II. *Definition of Terms*
>
> xxx xxx xxx
>
> 3. ***International Air Carrier*** – shall refer to a foreign airline corporation doing business in the Philippines having been granted landing rights in any Philippine port to perform international air transportation services/activities or flight operations from the Philippines to anywhere in the world and vice versa, in the case of on-line carrier, or **having maintained business establishment, agent or representative office in the Philippines for the sale of its own tickets/passage documents or tickets/passage documents of other airline companies, which airline companies operate without touching any Philippine port, in the case of off-line carrier**. **International air carrier**

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[31] Subject: Clarification of Issues Concerning Common Carriers by Air and Their Agents Relative to the Revenue and Receipt from Transport of Passengers, Goods/Cargoes and Mail, and from Excess Baggage.

> **includes both off-line carrier and on-line carrier.**
>
> xxx xxx xxx
>
> III. *Questions and Answers*
>
> xxx xxx xxx
>
> Q-14: *Which transactions with international air transport operators are zero-rated?*
>
> A-14: **Sale of services to persons engaged *exclusively* in international air transport operations**, including leases of property for use thereof, and the sale of goods, supplies, equipment and fuel **are zero-rated**. However, sale of goods, supplies, equipment and fuel as well as services rendered to persons engaged in both domestic and international operations shall be zero-rated only with respect to the portion that will be used in their international operations. *(Emphasis supplied)*

Evident from the above that services rendered to persons engaged in international air transport operations are zero-rated.

It has been established that British Airways PLC is authorized by the Civil Aeronautics Board (CAB)[32] to operate as an off-line carrier in the Philippines for the period covered by the subject assessment. Under the Agreements between British Airways PLC and petitioner,[33] petitioner is the exclusive passenger sales agent of British Airways PLC in the Philippines. Also proved is the fact that petitioner renders services as passenger sales agent only to British Airways PLC, which is an off-line international air carrier engaged exclusively in international air transport. Thus, petitioner

[32] Exhibits "E" and "F".
[33] Exhibits "G", "G-1", "G-2", "G-3", "G-4", "H", "I", and "J".

can treat its sale of services to British Airways PLC as VAT zero-rated sales. Significantly, respondent failed to present any evidence to controvert these facts.

Accordingly, this Court finds that the deficiency VAT assessment in the amount of ₱3,695,035.80 should be cancelled for lack of legal basis.

III. Deficiency Documentary Stamp Tax

Section 179 of the NIRC of 1997, as amended by Republic Act No. 9243[34], imposed DST on all debt instruments including certificate of time deposit, to wit:

> SEC. 179. *Stamp Tax on All Debt Instruments*. - **On every original issue of debt instruments**, there shall be collected a documentary stamp tax on One peso (P1.00) on each Two hundred pesos (P200), or fractional part thereof, of the issue price of any such debt instruments: *Provided*, That for such debt instruments with terms of less than one (1) year, the documentary stamp tax to be collected shall be of a proportional amount in accordance with the ratio of its term in number of days to three hundred sixty-five (365) days: *Provided*, *further*, That only one documentary stamp tax shall be imposed on either loan agreement, or promissory notes issued to secure such loan.
>
> For purposes of this section, the term debt instrument shall mean instruments representing borrowing and lending transactions including but not limited to debentures, **certificates of indebtedness**, due bills, bonds, loan agreements, including those signed abroad

[34] February 17, 2004.

> wherein the object of contract is located or used in the Philippines, instruments and securities issued by the government of any of its instrumentalities, deposit substitute debt instruments, **certificates or other evidences of deposits that are either drawing interest significantly higher than the regular savings deposit taking into consideration the size of the deposit and the risks involved or drawing interest and having a specific maturity date**, orders for payment of any sum of money otherwise than at sight or on demand, promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation. *(Emphasis supplied)*

Further, Section 198 of the NIRC of 1997, which imposes DST on assignments and renewals of certain instruments, states:

> SEC. 198. *Stamp Tax on Assignments and Renewals of Certain Instruments*. - **Upon each and every assignment or transfer of any mortgage, lease or policy of insurance**, or the renewal or continuance of any agreement, contract, charter, or any evidence of obligation or indebtedness by altering or otherwise, there shall be levied, collected and paid a documentary stamp tax, at the same rate as that imposed on the original instrument.

The Supreme Court, in the case of *Philacor Credit Corporation vs. Commissioner of Internal Revenue,*[35] had the occasion to interpret Section 198 of the NIRC of 1997, which is a similar provision of the old Tax Code, in this wise:

[35] G.R. No. 169899, February 6, 2013.

> If we look closely at this provision, we would find that **an assignment or transfer becomes taxable only in connection with mortgages, leases and policies of insurance. The list does not include the assignment or transfer of evidences of indebtedness; rather, it is the renewal of these that is taxable. The present case does not involve a renewal, but a mere transfer or assignment of the evidences of indebtedness or promissory notes**. A renewal would involve an increase in the amount of indebtedness or an extension of a period, and not the mere change in person of the payee.
>
> **In BIR Ruling No. 139-97 issued on December 29, 1997, then CIR Liwayway Vinzons-Chato pronounced that the assignment of a loan that is not for a renewal or a continuance does not result in a liability for DST**. Revenue Regulations No. 13-2004, issued on December 23, 2004, states that '[t]he DST on all debt instruments shall be imposed only on every original issue and the tax shall be based on the issue price thereof. Hence, the sale of a debt instrument in the secondary market will not be subject to the DST.' xxx *(Emphasis supplied)*

From the pronouncement of the Final Arbiter, the mere transfer or assignment of evidence of indebtedness is not among those subject to DST; rather it is the renewal of such that is taxable. A renewal would involve an increase in the amount of indebtedness or an extension of a period, and not the mere change in the person of the payee.

Revenue Memorandum Circular No. 77-2012 dated November 22, 2012, which interpret, among others, Section 198 of the NIRC of 1997, states that any assignment or re-assignment of debt instruments shall be subject to DST "only when the assignment or re-assignment of the debt instrument entails changing the maturity date or remaining period of coverage from that of the original instrument or carries with it a renewal or issuance of new instruments in the name of the transferee to replace the old ones." Otherwise, the assignment or re-assignment without any change in maturity date shall be exempt from DST as provided under Section 199(f) or (g) of the NIRC of 1997, as amended.

In the instant case, respondent assessed petitioner of deficiency DST under Section 179 of the NIRC of 1997, as amended, on the basis of its assignment of Certificate of Time Deposit. However, respondent failed to allege or show that the said certificate was renewed, *i.e.*, there was a change in maturity date. For this reason, the Court agrees with petitioner that the mere assignment of said certificate of time deposit is not subject to DST.

Where the law did not specify that such transfer and/or assignment is to be taxed, there would be no basis to recognize an imposition.[36] Well-settled is the rule that tax laws must be construed in favor of the taxpayer and strictly against the government; and that a tax cannot be imposed without clear and express words for that purpose.[37]

What is controlling in this case is the well-settled doctrine of strict interpretation in the imposition of taxes, not the similar doctrine as applied to tax exemptions. The rule in the interpretation of tax laws is that a statute will not be construed as imposing a tax unless it does so clearly, expressly, and unambiguously. A tax cannot be imposed without clear and express words for that purpose. Accordingly, the general rule of requiring adherence to the letter in construing statutes applies with peculiar strictness to tax laws and the provisions of a taxing act are not to be extended by implication. In answering the question of who is subject to tax statutes, it is basic that in case of doubt, such statutes are to be construed most strongly against the government and in favor of the subjects or citizens because

[36] *Philacor Credit Corporation vs. Commissioner of Internal Revenue, supra.*
[37] *Michel J. Lhuillier Pawnshop, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 166786, May 3, 2006

burdens are not to be imposed nor presumed to be imposed beyond what statutes expressly and clearly import. As burdens, taxes should not be unduly exacted nor assumed beyond the plain meaning of the tax laws.[38]

WHEREFORE, the instant Petition for Review is **PARTIALLY GRANTED**. The assessments for deficiency value-added tax and documentary stamp tax, as well as the interests and surcharges, for the taxable year ending March 31, 2007 are hereby **CANCELLED** and **WITHDRAWN** for lack of legal basis. The assessments for deficiency income tax and withholding tax on compensation for taxable year ending March 31, 2007 are **MODIFIED**.

Petitioner is hereby **ORDERED TO PAY** respondent the amount of ₱160,036.01, inclusive of the twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

TAX TYPE	BASIC TAX DUE	25% SURCHARGE	TOTAL
Income Tax	₱ 75,641.60	₱ 18,910.40	**₱ 94,552.00**
Withholding Tax on Compensation	52,387.21	13,096.80	**65,484.01**
TOTAL	**₱128,028.81**	**₱32,007.20**	**₱160,036.01**

Petitioner is likewise **ORDERED TO PAY** respondent the following:

(a) deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency income tax of ₱75,641.60 and withholding tax on compensation of ₱52,387.21 computed from July 15, 2007 and April 10, 2007, respectively, until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended; and

(b) delinquency interest at the rate of twenty percent (20%) per annum on the total amount of ₱160,036.01 and

[38] *Commissioner of Internal Revenue vs. Fortune Tobacco Corporation*, G.R. Nos. 167274-75, July 21, 2008.

on the 20% deficiency interest which have accrued as afore-stated in (a), computed from October 13, 2010 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

I Concur:

ERLINDA P. UY
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERLINDA P. UY
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice