REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

JTKC LAND, INC., *Petitioner,*	**CTA Case No. 10051**
- versus -	Members: **REYES-FAJARDO,** *Chairperson,* and **ANGELES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUN 30 2026 4:16 p.m.

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DECISION

REYES-FAJARDO, *J.*:

This Petition for Review with Application for Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction,[1] filed by JTKC Land, Inc. on March 25, 2019, assails the Final Decision on Disputed Assessment (FDDA) dated February 11, 2019, issued by Regional Director Glen A. Geraldino, which found petitioner liable for deficiency withholding tax-others on one-time transactions (ONETT) and compromise penalty in the amounts of ₱51,592,945.03 and ₱375,000.00, for the taxable years (TYs) 2008, 2009, and 2010.[2]

PARTIES

Petitioner JTKC Land, Inc. is a corporation duly organized and existing under the laws of the Republic of the Philippines, with office address at G/F Amorsolo Mansion, 130 Amorsolo St., San Lorenzo, Makati City.[3]

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1 Docket - Vol. I, pp. 14 to 46.
2 Refer to the Prayer, *Petition for Review*, Docket - Vol. I, pp. 43 to 44.
3 Par. 6, *Petition for Review*, Docket - Vol. I, pp. 15 to 16.

Respondent is sued in his nominal and official capacity as the Commissioner of Internal Revenue, having been duly appointed to perform the duties of his office, including, among others, the power to decide disputed assessments, subject to the exclusive appellate jurisdiction of the Court, pursuant to Section 4 of the National Internal Revenue Code (NIRC), and Section 7 of Republic Act (RA) No. 1125, as amended by RA No. 9282.[4]

FACTS

On February 12, 2015, the Bureau of Internal Revenue (BIR) issued Letter of Authority (LOA) No. LOA-050-2015-00000062 (SN: eLA201100080582),[5] authorizing Revenue Officer (RO) Alvin Lucas/Group Supervisor (GS) Celestino Viernes of Revenue District Office No. 050, Revenue Region No. 8, to examine petitioner's books of accounts and other accounting records, for documentary stamp tax and withholding tax-expanded covering the period from January 1, 2010 to December 31, 2010.

Thereafter, on April 10, 2015, the BIR issued a Preliminary Assessment Notice (PAN),[6] containing the proposed assessment for withholding tax-others ONETT in the amount of ₱41,126,021.10, inclusive of surcharge and interest, and compromise penalties, totaling ₱375,000.00.

On April 20 2017, petitioner received the following:[7]

1) *Assessment Notice* dated April 12, 2017 with Assessment No. WO-ELA80582-10-17-630 for withholding tax-others for the year 2010 in the amount of ₱46,618,216.43;

2) *Assessment Notice* dated April 12, 2017 with Assessment No. MC-ELA80582-08-17-630 for compromise penalty for the year 2008 in the amount of ₱125,000.00;

3) *Assessment Notice* dated April 12, 2017 with Assessment No. MC-ELA80582-09-17-630 for compromise penalty for the year 2009 in the amount of ₱125,000.00;

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4 Par. 9, *Petition for Review*, vis-à-vis Par. 1, *Answer*, Docket – Vol. I, p. 16 and p. 229, respectively.

5 Exhibit "R-1," BIR Records, p. 2.

6 Exhibits "P-9" and "R-1," BIR Records, pp. 235 to 238.

7 Par. 8, Admitted Facts and Stipulation of Facts, Pre-Trial Order, Docket – Vol. II, p. 784 to 785, respectively.

4) *Assessment Notice* dated April 12, 2017 with Assessment No. MC-ELA80582-10-17-630 for compromise penalty for the year 2010 in the amount of ₱125,000.00;

5) *Formal Assessment Notice* (FAN) (Part I) dated April 12, 2017, which provides that "there has been found due from (JTKC Land) deficiency Withholding Tax-Others (ONETT transaction not subject to CGT) for the taxable years 2008, 2009 and 2010, inclusive of increments, pursuant to *eLetter of Authority* (eLA) No. 80582 dated February 12, 2015;

6) *Details of Discrepancies* dated April 12, 2017, attached as Annex A-1 to the Formal Assessment Notice (Part I); and

7) FAN (Part II) dated April 12, 2017, which provides that JTKC Land "failed to file pay the withholding tax due for the taxable years 2010, 2009 & 2008 on time or times required by existing revenue laws, rules and regulations in relation to Section 255 of the National Internal Revenue Code, as amended by R.A. 8424..."

On May 22, 2017, petitioner filed a Protest dated May 19, 201[7], seeking the withdrawal and cancellation of the assessment for withholding taxes, surcharge, interests, and compromise penalty for TYs 2008, 2009, and 2010.[8] In its protest, petitioner invoked BIR Ruling DA-(JV-023) 178-08 (JTKC BIR Ruling) in support of its position that the distribution of the condominium units and appurtenant parking slots in the condominium project to investors, which was the subject of the BIR assessment, is not liable for withholding tax.

According to the JTKC BIR Ruling, the BIR confirmed that the allocation and delivery of serviced apartment units to Aldex Realty Corporation, as well as residential condominium units and corresponding parking spaces to petitioner and the investors pursuant to the Joint Venture Agreement (JVA) and the Project Investment Agreements (PIAs), in consideration of their respective capital contributions, do not constitute taxable events. The ruling held that such allocation merely represents a return of capital contributions and is therefore not subject to income tax or withholding tax. It further clarified that the transaction does not constitute a sale, barter, exchange, lease, rendering of services, or importation of goods; hence, not subject to value-added tax (VAT)

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8 Par. 9, Admitted Facts and Stipulation of Facts, Pre-Trial Order dated February 22, 2021, Docket - Vol. II, p. 784 to 785, respectively. In page 1 of the FDDA dated February 11, 2019, the BIR acknowledged that petitioner's protest was dated May 19, 2017.

within the contemplation of Section 105 of the National Internal Revenue Code of 1997 (NIRC), as amended.

On February 21, 2019, petitioner received the FDDA denying its protest dated February 11, 2019.[9] In the FDDA, Regional Director Glen A. Geraldino stated that JTKC BIR Ruling had already been revoked by Revenue Memorandum Circular (RMC) No. 55-2010, entitled *"Circularizing Revocation of BIR Rulings Issued to G&W Architects, Engineers and Project Development Consultants Relative to Its 'Build-to-Own' Transactions"* which was issued on June 28, 2010, by the then Commissioner of Internal Revenue Joel Tan-Torres. The Details of Discrepancy state in part:

> ...
> Since you failed to prove during the conduct of reinvestigation, the exemption from tax on distribution or delivery of the condominium units to the investors pursuant to Project Investment Agreements nor adduced evidence to support the same, the reiteration of the herein case is warranted. In addition, your contention anchored in the BIR Ruling No. DA-455-2007 is bereft of merit considering that the said ruling has been voided by the subsequent issuance of RMC No. 055-2010. Furthermore, said ruling constitute violation of PD 957. ...

On March 25, 2019, petitioner filed its Petition for Review with an Application for issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction.[10]

At the hearing held on July 25, 2019, on Petitioner's Application for issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction,[11] petitioner presented its Managing Director Mr. Romualdo Macasaet, who testified on direct examination through his Judicial Affidavit.[12]

On August 23, 2019, petitioner filed a Motion to Admit Attached Formal Offer of Evidence,[13] attaching thereto its Formal Offer of

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[9] Exhibit "R-14," BIR Records, pp. 380 to 384.
[10] Docket - Vol. I, pp. 14 to 46.
[11] Minutes of the hearing held on, and Order dated, July 11, 2019, Docket - Vol. I, pp. 199 to 201.
[12] Exhibit "P-4," Docket - Vol. I, pp. 177 to 186; Minutes of the hearing held on, and Order dated, July 11, 2019, Docket - Vol. I, pp. 199 to 201.
[13] Docket - Vol. I, pp. 220 to 222.

Evidence.[14] The Court granted the motion in its Resolution dated September 6, 2019.[15]

On August 29, 2019, respondent posted his *Answer*.[16]

On September 20, 2021, respondent filed his Comment (To Petitioner's Formal Offer of Evidence.[17]

On September 5, 2019, petitioner filed a Motion to Declare Respondent as in Default,[18] which the Court considered moot in its Order dated September 10, 2019.[19]

On September 11, 2019, petitioner filed a Motion for Special Order,[20] praying that the Court declare as admitted the allegations of facts set forth in paragraphs 6, 7, 11, 11.1, 11.2, 11.3, 11.4, 11.5, 16, 12, 14, 18, 18.1, 18.2, 18.3, 18.4, 19, 20, 21, 22, 23, 24, 32, 32.1, 32.2, 32.3, 32.4, 32.5, 32.6, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 46, 47, 48, 49, 50, 51, 52, 54, 55, 56, 57, 58, 59, 60, 63, 66, 67, 68, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 99, 100, 101, 103, 110, 112, 114, 115, 116, 117, 118, 120, 123, 135, 136, 137, 138, 139, 140, 141, 142, 145, 146, and 148 of the Petition for Review for respondent's failure to specifically deny the same. In response, respondent posted his Comment/Opposition (to Motion for Special Order) on October 11, 2019.[21]

In its Resolution dated February 18, 2020,[22] the Court admitted petitioner's offered exhibits and denied petitioner's Motion for Special Order.

On March 6, 2020, respondent filed his Very Strong Opposition/Comment (to Petitioner's Motion for Suspension of the Payment of the Alleged Deficiency Taxes and Application for Issuance

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14 Docket – Vol. I, pp. 223 to 228.
15 Docket – Vol. I, p. 241.
16 Docket – Vol. I, pp. 229 to 233.
17 Docket – Vol. I, pp. 290 to 291.
18 Docket – Vol. I, pp. 235 to 238.
19 Docket – Vol. I, p. 242.
20 Docket – Vol. I, pp. 244 to 287.
21 Docket – Vol. I, pp. 300 to 303.
22 Docket – Vol. I, pp. 306 to 309.

of Temporary Restraining Order and/or Writ of Preliminary Injunction).[23]

On March 11, 2020, petitioner filed a Motion to Admit (attached Memorandum dated 11 March 2020 on Application for Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction),[24] attaching thereto its Memorandum.[25] In its Resolution dated June 5, 2020,[26] the Court granted petitioner's Motion to Admit and admitted the Memorandum.

In the Resolution dated August 3, 2020,[27] the Court denied petitioner's Application for Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction, incorporated in the Petition for Review, for lack of merit.

On September 11, 2020, petitioner filed, through electronic mail, a Motion for Reconsideration (on Resolution promulgated on 03 August 2020),[28] to which respondent posted his Very Strong Opposition/Comment (to Motion for Reconsideration on Resolution promulgated on 03 August 2020) on September 21, 2020.[29]

In the Resolution dated October 13, 2020,[30] the Court denied petitioner's Motion for Reconsideration (on Resolution promulgated on 03 August 2020).

On October 15, 2020, pre-trial conference was held.[31]

For failure of the parties to file their Joint Stipulation of Facts and Issues (JSFI) within the period granted by the Court, their right to file the same was deemed waived.[32]

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23 Docket - Vol. I, pp. 342 to 346.
24 Docket - Vol. I, pp. 313 to 315.
25 Docket - Vol. I, pp. 316 to 335.
26 Docket - Vol. I, pp. 356 to 357.
27 Docket - Vol. I, pp. 359 to 370.
28 Docket - Vol. I, pp. 371 to 380 and 384 to 392.
29 Docket - Vol. I, pp. 359 to 370.
30 Docket - Vol. I, pp. 485 to 487.
31 Resolution dated August 3, 2020, Docket - Vol. I, pp. 359 to 370; Minutes of the hearing held on, and Order dated, October 15, 2020, Docket - Vol. I, pp. 511 to 513 and 515 to 517, respectively.
32 Resolution dated December 16, 2020, Docket - Vol. II, p. 750.

On December 16, 2020, the parties posted their JSFI.[33] However, in the Resolution dated January 15, 2021,[34] the Court expunged the JSFI from the records for having been filed out of time. The pre-trial was thereafter deemed terminated, and the Court issued a Pre-Trial Order dated February 22, 2021.[35]

During the trial, petitioner presented the following witnesses: (1) Mr. Romualdo Macasaet,[36] its Managing Director; and (2) Ms. Hazel Pangandian-Tabamo,[37] the Court-commissioned Independent Certified Public Accountant (ICPA).[38]

On November 8, 2021, petitioner filed, through electronic mail a Motion to Admit Attached Formal Offer of Evidence,[39] attaching its Formal Offer of Evidence,[40] without respondent's comment per Records Verification dated December 6, 2021.[41]

On November 23, 2021, petitioner filed a Formal Offer of Additional Evidence,[42] to which respondent posted his Comment (To Petitioner's Additional Formal Offer of Evidence on November 26, 2021).[43] On December 1, 2021, petitioner filed a Motion to Admit attached Amended Formal Offer of Evidence,[44] attaching thereto its Amended Formal Offer of Evidence.[45] Respondent posted his Comment (To Petitioner's Amended Formal Offer of Evidence) on August 2, 2022.[46] In the Resolution dated October 24, 2022,[47] the Court admitted petitioner's offered exhibits, *except* Exhibits "P-19" and "P-20," which were not found in the records of the case.

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33 Docket - Vol. II, pp. 751 to 758.
34 Docket - Vol. II, pp. 762 to 763.
35 Docket - Vol. II, pp. 779 to 790.
36 Exhibit "P-10," Docket - Vol. II, pp. 682 to 694; Minutes of the hearing held on, and Order dated February 16, 2021, Docket - Vol. II, pp. 770 to 772, and 774 to 775, respectively.
37 Exhibit "P-11," Docket - Vol. II, pp. 934 to 955; Order dated July 27, 2021, Docket - Vol. II, pp. 927 to 928.
38 *Oath of Commission* dated February 16, 2021, Docket - Vol. II, p. 773; Minutes of the hearing held on, and Order dated February 16, 2021, Docket - Vol. II, pp. 770 to 772, and 774 to 775, respectively.
39 Docket - Vol. III, pp. 909 to 992 and 1040 to 1042.
40 Docket - Vol. III, pp. 993 to 1024 and 1043 to 1074.
41 Records Verification dated December 6, 2021, issued by the Judicial Records Division of this Court, Docket - Vol. IV, p. 1814.
42 Docket - Vol. III, pp. 1078 to 1084.
43 Docket - Vol. IV, pp. 1816 to 1818.
44 Docket - Vol. III, pp. 1114 to 1116.
45 Docket - Vol. III, pp. 1117 to 1149.
46 Records Verification dated July 13, 2022, issued by the Judicial Records Division of this Court, Docket - Vol. IV, p. 1843.
47 Docket - Vol. IV, pp. 1861 to 1864.

For his part, respondent presented the following witnesses: (1) RO Alvin B. Lucas;[48] and (2) RO Raymond A. Pasco.[49]

On May 4, 2023, respondent filed his Formal Offer of Evidence/Exhibits (For Respondent),[50] to which petitioner filed its Comment/Opposition to Respondent's Formal Offer of Evidence on May 9, 2023.[51]

Also, on May 4, 2023, petitioner filed a Manifestation,[52] with Motion to Admit Attached Judicial Affidavit,[53] stating that it would present as a rebuttal witness, Mr. Joel Tan-Torres, former Commissioner of Internal Revenue who issued RMC No. 55-2010, attaching his Judicial Affidavit thereto.[54]

On May 9, 2023, petitioner filed its Supplemental Manifestation with Motion to Admit attached TSN dated November 17, 2021,[55] attaching the stenographic notes of the cross-examination of Mr. Joel Tan-Torres conducted during the November 17, 2021, hearing in CTA Case No. 10059, JTKC Land, Inc. v. Commissioner of Internal Revenue. Respondent posted his Comment on petitioner's Manifestation dated May 4, 2023, and Supplemental Manifestation with Motion to Admit dated May 9, 2023.[56]

In the Resolution dated June 26, 2023, the Court admitted all of respondent's exhibits.[57]

Under Resolution dated October 9, 2023,[58] the Court denied petitioner's Motion to Admit Attached Judicial Affidavit and Motion to Admit attached TSN dated 17 November 2021 as rebuttal evidence.

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48 Exhibit "R-16," Docket - Vol. I, pp. 407 to 412; Order dated April 19, 2025, Docket - Vol. IV, pp. 1878 to 1879.
49 Exhibit "R-17," Docket - Vol. I, pp. 429 to 433; Order dated April 19, 2025, Docket - Vol. IV, pp. 1878 to 1879.
50 Docket - Vol. IV, pp. 1916 to 1922.
51 Docket - Vol. IV, pp. 1933 to 1942.
52 Docket - Vol. IV, pp. 1881 to 1884.
53 Docket - Vol. IV, pp. 1885 to 1887.
54 Docket - Vol. IV, pp. 1888 to 1914.
55 Docket - Vol. IV, pp. 1924 to 1926.
56 Docket - Vol. IV, pp. 1949 to 1953.
57 Docket - Vol. IV, pp. 1954 to 1955.
58 Docket - Vol. IV, pp. 1958 to 1961.

Nevertheless, the case was eventually set for the presentation of petitioner's rebuttal evidence.[59]

On February 8, 2024, petitioner filed a Submission (with Attached Judicial Affidavit of Mr. Joel Tan-Torres),[60] attaching the Judicial Affidavit of Joel L. Tan-Torres.[61]

During the hearing held on October 2, 2024, petitioner presented its rebuttal witness, Mr. Joel L. Tan-Torres. [62]

On October 10, 2024, petitioner filed its Second Formal Offer of Evidence,[63] to which respondent filed his Comment (To Petitioner's Second Formal Offer of Evidence) on October 21, 2024.[64] In the Resolution dated February 17, 2025,[65] the Court admitted all of petitioner's offered exhibits.

In the Resolution dated June 30, 2025, the case was submitted for decision,[66] taking into account petitioner's Memorandum filed on March 21, 2025[67] and respondent's Memorandum posted on March 31, 2025.[68]

ISSUES

The parties submit the following issues for the Court's resolution:

1. Whether petitioner is liable for withholding tax-others (ONETT) in the amount of ₱51,592,945.03, inclusive of interest and penalties for taxable year 2010; and

2. Whether petitioner is liable for compromise penalty in the amount of ₱375,000.00 for its alleged failure to file

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59 Resolution dated August 6, 2024, Docket – Vol. V, p. 2351.
60 Docket – Vol. IV, pp. 1967 to 1969.
61 Exhibit "P-32," Docket - Vol. IV, pp. 1971 to 1998.
62 Order dated, October 2, 2024, Docket – Vol. V, pp. 2353 to 2355.
63 Docket – Vol. V, pp. 2357 to 2360.
64 Docket – Vol. IV, pp. 2363 to 2364.
65 Docket – Vol. IV, pp. 2386 to 2387.
66 Minute Resolution dated June 30, 2025, Docket – Vol. V, p. 2496.
67 Docket – Vol. V, pp. 2395 to 2467.
68 Docket – Vol. V, pp. 2479 to 2492.

and pay the withholding tax due for the taxable years 2008, 2009 and 2010."[69]

ARGUMENTS

Petitioner argues that the assessments for TYs 2008, 2009, 2010 are void for lack of a valid LOA. It further argues the invalidity of LOA dated February 12, 2015 for lack of jurisdiction of the Revenue Region that issued the LOA. Petitioner also faults the BIR for failing to state the factual and legal bases of the assessment.

Finally, petitioner invokes JTKC BIR Ruling in support of the invalidity of the withholding tax assessment. It claims that the BIR acted in bad faith in assessing alleged withholding tax-others (ONETT) and compromise penalty for TYs 2008, 2009, and 2010.

On the other hand, respondent maintains petitioner's liability for withholding tax-others (ONETT) in the amount of ₱51,592,945.03, inclusive of interest and penalties, for taxable year 2010. Respondent asserts that petitioner failed to file the required Withholding Tax Remittance Return (BIR Form 1606) covering its collection from the sale of the subject condominium units; hence, the ten (10)-year prescriptive period for assessment under Section 222 (a) of the NIRC, as amended applies. Respondent further reiterates the revocation of JTKC BIR Ruling.

RULING

The Petition impresses.

The Court has jurisdiction over CTA Case No. 10051.

Section 7(a)(1), in relation to Section 11 of Republic Act (RA) No. 1125,[70] as amended by RA No. 9282[71] confers upon the Court of Tax

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69 Issue/s to be Tried or Resolved, Pre-Trial Order dated February 22, 2021, Docket - Vol. II, p. 787.

70 An Act Creating the Court of Tax Appeals.

71 An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership,

Appeals (CTA) exclusive appellate jurisdiction to review respondent's decisions in cases involving disputed assessments. Any party adversely affected must appeal respondent's decision with the CTA, within thirty (30) days from receipt thereof. These provisions respectively read:

> Sec. 7. Jurisdiction. - The CTA shall exercise:
>
> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> 1. **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;
>
> ...
>
> SEC. 11. Who May Appeal; Mode of Appeal; Effect of Appeal. - **Any party adversely affected by a decision**, ruling or inaction of the Commissioner of Internal Revenue, ... **may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling** or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.
>
> ...[72]

On February 21, 2019, petitioner received the FDDA issued by Regional Director Glen A Geraldino dated February 11, 2010, directing payment of withholding tax-others (ONETT) and compromise penalty in the amounts of ₱51,592,945.03 and ₱375,000.00, for the TYs 2008, 2009, and 2010.[73] Counting thirty (30) days from February 21, 2019, petitioner had until March 23, 2019, to seek judicial relief. Petitioner filed its Petition for Review on March 25, 2019, thereby vesting the CTA with jurisdiction over CTA Case No. 10051. Since March 23, 2019, fell on a Saturday, the filing of the Petition for Review on the following Monday, March 25, 2019, was timely.[74]

Amending for the Purpose Certain Sections of Republic Act No. 1125, As Amended, Otherwise Known as The Law Creating The Court of Tax Appeals, and For Other Purposes.

72 Boldfacing supplied.

73 Refer to the Prayer, *Petition for Review*, Docket - Vol. I, pp. 43 to 44.

74 Section 1, Rule 22 of the Rules of Court, as amended, provides:

As for the merits of CTA Case No. 10051, the assessment issued by the BIR against petitioner for withholding tax-others (ONETT) in the amount of ₱41,126,021.10, inclusive of surcharge and interest, and compromise penalties, totaling ₱375,000.00 covering TYs 2008, 2009, and 2010, deserves cancellation. The corresponding justifications follow.

The withholding tax assessments for TYs 2008 and 2009 are void for lack of a valid Letter of Authority.

Section 6(A) of the NIRC, as amended, requires authority from the CIR or from his duly authorized representative before an examination of any taxpayer and the assessment of the correct amount of tax may be made:[75]

> SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.*
>
> (A) Examination of Return and Determination of Tax Due. After a return has been filed as required under the provisions of this Code, **the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax**, notwithstanding any law requiring the prior authorization of any government agency or instrumentality: ...[76]

Sections 10(c) and 13 of the NIRC, as amended, authorize the Revenue Regional Directors to issue LOAs in favor of ROs performing assessment functions in their respective region and district offices for the examination of taxpayers:

Section 1. *How to compute time.* — In computing any period of time prescribed or allowed by these Rules, or by order of the court, or by any applicable statute, the day of the act or event from which the designated period of time begins to run is to be excluded and the date of performance included. If the last day of the period, as thus computed, falls on a Saturday, a Sunday, or a legal holiday in the place where the court sits, the time shall not run until the next working day.

75 See *Medicard Philippines, Inc., v. Commissioner of Internal Revenue,* G.R. No. 222743, April 5, 2017.

76 Boldfacing supplied.

> SEC. 10. ***Revenue Regional Director.*** - Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, the Revenue Regional director shall, within the region and district offices under his jurisdiction, among others:
>
> ...
>
> (c) Issue Letters of authority for the examination of taxpayers within the region;
>
> ...
>
> SEC. 13. ***Authority of a Revenue Officer.*** - Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, **a Revenue Officer assigned to perform assessment functions in any district may, pursuant to a Letter of Authority issued by the Revenue Regional Director, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due** in the same manner that the said acts could have been performed by the Revenue Regional Director himself.[77]

Indeed, the authority to audit a taxpayer is evidenced by the LOA, which empowers the designated revenue officer to examine, verify, and scrutinize a taxpayer's books and records in relation to his internal revenue tax liabilities for a particular period. In cases where the BIR conducts an audit without a valid LOA, or in excess of the authority duly provided therefor, the resulting assessment shall be void and ineffectual [78]

In this case, RD Amora issued an LOA dated February 12, 2015,[79] authorizing RO Lucas under GS Viernes, to examine petitioner's books of accounts and other accounting records for Documentary Stamp Tax (DS), Withholding Tax- Expanded (WE) covering the period from **January 1, 2010 to December 31, 2010.**

Notably, the records are bereft of any showing that RO Lucas were authorized through an LOA to examine petitioner's books of

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77 Boldfacing supplied.

78 *AFP General Insurance Corporation vs. Commissioner of Internal Revenue,* G.R. No. 222133, November 4, 2020.

79 Exhibit "R-1," BIR Records, p. 2.

accounts and records for TYs 2008 and 2009. RO Lucas himself confirmed this deficiency during his testimony in open court:

ATTY. JOSE A. BERNAS:

Q. Okay. You agree with me that the Letter of Authority only covers the Taxable Period January 2010 to December 2010.

REVENUE OFFICER ALVIN B. LUCAS:

A. Yes, Your Honors. The Letter of Authority is (interrupted)

ATTY. JOSE A. BERNAS:

Q. Thank you. Okay. But the assessment that you subsequently issued also covers Taxable Years 2008 and 2009?

REVENUE OFFICER ALVIN B. LUCAS:

A. Yes, Your Honors.

ATTY. JOSE A. BERNAS:

Q. You agree with me that you do not have an explicit Letter of Authority to assess or investigate 2008 and 2009. Right? You don't have one?

REVENUE OFFICER ALVIN B. LUCAS:

A. Yes, Your Honors.

ATTY. JOSE A. BERNAS:

Q. And you never did. Right?

REVENUE OFFICER ALVIN B. LUCAS:

A. Yes, Your Honors." [80]

Therefore, the examination and audit conducted by RO Lucas for TYs 2008 and 2009, leading to the issuance of the deficiency formal assessment for withholding tax-others (ONETT) covering said years are void and ineffectual.

Petitioner accurately pointed out that RO Pasco conducted reinvestigation of its administrative protest under a Memorandum of

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80 Transcript of Stenographic Notes at the hearing held on April 19, 2023, at pp. 11 to 12.

Assignment.[81] Indeed, *Commissioner of Internal Revenue vs. McDonald's Philippines Realty Corp. (McDonald's)*[82] held that that an LOA granted to a particular Revenue Officer (RO) cannot be transferred or extended to another RO through a mere Memorandum of Assignment, Referral Memorandum, or such other equivalent internal BIR document. The reassignment or substitution of the authorized RO by another substitute or replacement RO to continue the audit or investigation, without the issuance of a new or amended LOA, constitutes a usurpation of the authority vested by law in the Commissioner of Internal Revenue (CIR) or his duly authorized representative and supplants the functions of the LOA.

Following *McDonald's,* the reinvestigation conducted by RO Pasco, as well as the FDDA dated February 11, 2019, reflecting the results thereof are void, because of lack of prior legal authority from respondent or his duly authorized representative. Be that as it may, jurisprudence[83] has clarified that the invalidity of the FDDA does not *ipso facto* render the formal assessment void. Rather, the defect affects only the validity of the reinvestigation and the FDDA issued pursuant thereto, without invalidating the assessment itself.

To summarize:

a. The deficiency assessment for withholding tax - others (ONETT) for TYs 2008 and 2009 are outright void, because RO Lucas lacks prior valid permission to examine petitioner for said years, from respondent or his duly authorized representative; and

b. RO Pasco's examination at reinvestigation stage of the assessment process based on a MOA renders the resultant FDDA invalid. It does not affect the BIR's FLD/FAN containing the deficiency assessment for withholding tax - others (ONETT).

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81 Answer to Question No. 8, Exhibit "R-17," Docket - Vol. I, at p. 430.

82 G.R. No. 242670, May 10, 2021.

83 *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation,* G.R. Nos. 215534 and 215557, April 18, 2016.

RMC No. 55-2010 did not revoke the JTKC BIR Ruling.

Petitioner's tax exemption is anchored on the return of capital principle, which is distinct from the beneficial ownership doctrine that formed the basis of the BIR ruling issued to G&W Architects.

Although JTKC BIR Ruling cited BIR Ruling No. DA-455-2007-Kensington Condominium (G&W Architects BIR Ruling), one of the rulings expressly revoked under RMC No. 55-2010, the two rulings involved fundamentally different legal and factual foundations.

JTKC BIR Ruling was governed by a JVA and PIAs, under which the parties pooled their respective capital contributions for the development of a condominium project. Under this arrangement, the investors did not acquire ownership of the condominium units upon execution of the agreements. Ownership arose only upon subsequent allocation and delivery of the units. The BIR treated such allocation as a non-taxable **return of capital**. As the investors merely received property equivalent to what they had contributed, no taxable gain or income was realized.

By contrast, the G&W Architects BIR Ruling arose from G&W Architects' "Build-To-Own (BTO) System," a trust-based co-ownership arrangement in which G&W Architects merely held legal title to the condominium unit as trustee while its clients were the beneficial owners from the outset of the project, with G&W Architects acting solely as the holder of legal title for administrative purposes. Consequently, the subsequent conveyance of legal title to the clients was not treated as a taxable sale but merely as the transfer of legal title to the existing beneficial owners. Since G&W Architects realized no income from such conveyance, the transaction was not subject to income tax, withholding tax, or other applicable taxes.

Thus, while both rulings reached the same tax result, the non-taxability of the transfer, they did so through entirely distinct legal basis: one through the fundamental tax principle that the return of capital is not income, the other through the doctrine of beneficial ownership and trust. This critical distinction means that the revocation of the G&W Architects ruling does not, by itself, imply the revocation of the JTKC BIR Ruling.

The revocation of the G&W Architects BIR Ruling was due to a misrepresentation of the facts on which the ruling was based. No such misrepresentation existed on the part of petitioner.

In its request for ruling, G&W Architects made the following representations: *firstly,* that under the build-to-own, build-your-own, and similar concepts, the developer merely manages the construction of the condominium project, and that the funds as contributed by the individual investors are pooled in a bank with the developer acting only as project manager and receiving a project management fee; and *secondly,* that the assignment and delivery of the developed units to joint owners (individual investors), is claimed not to be a taxable event being merely a transfer of property held in trust by the trustee for the individual trustors.[84]

The request for ruling was premised on the second representation, that it was a trustee holding title solely for the benefit of the clients-trustors. Hence, the BIR correctly ruled that the arrangement did not constitute a taxable event.

The G&W Architects BIR ruling was limited to the trustor-trustee relationship between G&W Architects and its client-trustors. However, this ruling has been misapplied to exempt developers on the premise that they are not liable for taxes where their clients are characterized as investors rather than buyers.

Since the G&W Architects BIR Ruling was invoked to justify an exemption for developers, the BIR later revoked it after determining that G&W Architects had misrepresented that the build-your-own scheme was, in fact a pre-selling/ selling transaction subject to tax. It

84 Circularizing Revocation of BIR Rulings Issued to G&W Architects, Engineers and Project Development Consultants, Revenue Memorandum Circular No. 055-10, June 28, 2010.

is true that a developer will not be liable for tax on a transfer if the clients were beneficial owners from the outset, in which case the subsequent execution of conveyance documents would merely constitute the formal transfer of legal title to the investors, a transaction that does not give rise to taxable income. However, in G&W Architects' case, the BIR later established that the clients were not beneficial owners but were, in fact, actual **buyers** of the condominium units. Accordingly, the transfer of the units constituted the consummation of a sale, thereby subjecting the transaction to the appropriate taxes.

BIR rulings are issued on the basis of particular facts and circumstances presented by the taxpayer and constitute the BIR's interpretation of the law at a specific point in time.[85] They are not general pronouncements of law but are private in nature and applicable only to the parties who sought them. The validity of a ruling is inextricably tied to the veracity of the facts represented by the taxpayer. Where those facts are later found to be inaccurate, the ruling may be revoked, not because the legal principle was wrong, but because the factual predicate no longer supports the conclusion.

Indeed, a plain reading of RMC No. 55-2010 entitled *"Circularizing Revocation of BIR Rulings Issued to G&W Architects, Engineers and Project Development Consultants Relative to Its 'Build-to-Own' Transactions,"* reveals that the revocation of the rulings issued to G&W Architects was prompted solely by the BIR's determination that G&W Architects had misrepresented the facts upon which the rulings were based. Accordingly, the rulings issued to G&W Architects, including BIR Ruling No. DA-455-2007, were declared null and void:

> **"For the information and guidance of all internal revenue officials, employees and others concerned, quoted hereunder is the**

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85 **BIR REVENUE MEMORANDUM ORDER NO. 9-2014, February 6, 2014**
REQUESTS FOR RULINGS WITH THE LAW AND LEGISLATIVE DIVISION

This Order is issued to serve as guidelines in the processing of requests for rulings with the Law and Legislative Division.
Section 1. Tax Rulings. Tax rulings are official positions of the Bureau on inquiries of taxpayers, who request clarification on certain provisions of the National Internal Revenue Code (NIRC), other tax laws, or their implementing regulations, usually for the purpose of seeking tax exemptions. Rulings are based on particular facts and circumstances presented and are interpretations of the law at a specific point in time.

full text of the memorandum letter to the Regional Director of Revenue Region No. 8, Makati, declaring the following rulings null and void:

1. BIR Ruling No. DA-056-2003 dated February 24, 2003 (Penhurst Parkplace Condominium)
2. BIR Ruling No. DA-624-2004 dated December 10, 2004 (Kensington Place Condominium)
3. BIR Ruling No. DA-455-2007 dated August 17, 2007 (Kensington Condominium)
4. BIR Ruling No. DA-410-2007 dated July 26, 2007 (Sapphire Residences)
5. BIR Ruling No. DA-409-2007 dated July 26, 2007 (Blue Sapphire Residences Condominium)
6. BIR Ruling No. DA-337-2007 dated June 20, 2007 (Grand Hamptons Place Condominium)

...

In the said memorandum, it was alleged that, upon investigation of RDO No. 44, the facts are not as represented by the subject taxpayer in their requests for ruling. Hence, the transactions should be treated as pre-selling/ selling and therefore subject to EWT and DST.

...

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be disclosed that the facts are different, then this ruling shall be considered null and void."

Finding merit in the arguments of our revenue officers and considering **<u>the misrepresentation by G&W Architects, Engineers and Project Development Consultants</u>**, it is hereby declared that the following rulings are null and void:

...

Furthermore, the revenue district offices under your region are ordered to:

...

b. Determine whether other taxpayers granted similar rulings ought to be investigated as well.

...

The nullification of the abovementioned rulings, is anchored on the findings that the *scheme of build-to-own, build-your-own, and similar concepts* mainly consist of the developer making it appear that it merely manages the construction of the condominium project, and that the funds as contributed by the individual investors

> are pooled in a bank with the developer, as project manager, receiving a project management fee only. Moreover, in the above scheme, the assignment and delivery of the developed units to joint owners (individual investors), is claimed not to be a taxable event being merely a transfer of property held in trust by the Trustee for the individual Trustors. **The foregoing effectively resulted in the non-payment of income taxes and value-added tax by the developer on the gross project amount.**
>
> ...
>
> The revocation of the abovementioned rulings is hereby circularized for the guidance and information of all revenue district offices. All concerned are hereby enjoined to report similar schemes for appropriate investigation, and to give this circular as wide a dissemination as possible."[86]

No similar finding of misrepresentation exists with respect to the taxpayer covered by JTKC BIR Ruling. Accordingly, JTKC BIR ruling continues to be the BIR's official interpretation of the tax treatment of petitioner's transactions, based on the facts represented in its request.

JTKC BIR Ruling is the BIR's official position regarding the tax treatment of the PIAs entered into by petitioner and its investors.

In *Commissioner of Internal Revenue v. Court of Tax Appeals (First Division) and Pilipinas Shell Petroleum Corporation (PSPC),*[87] the Supreme Court discussed the definition and function of a BIR Ruling, as follows:

> Preliminarily, it bears emphasizing that **BIR rulings** "**are the official position of the Bureau to queries raised by taxpayers and other stakeholders** <u>**relative to clarification and interpretation of tax laws**</u>. In this regard, the primary purpose of a BIR Ruling is simply to determine whether a certain transaction, under the law, is taxable or not based on the circumstances provided by the taxpayer."
>
> What sets apart **BIR Rulings** from other issuances of the BIR is that it <u>**relates to a particular taxpayer's set of facts and circumstances and a consequent determination of taxability or tax exemption, when applicable**</u>....

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[86] Boldfacing supplied.
[87] G.R. No. 210501, March 15, 2021.

Specifically, citing plethora[88] of cases, *Commissioner of Internal Revenue v. Philippine Health Care Providers, Inc.*[89] prohibited respondent from adopting a position contrary to one previously taken, if as a result, the taxpayer would be prejudiced by said adoption:

> In *ABS-CBN Broadcasting Corp. v. Court of Tax Appeals*, [the Supreme] Court held that under Section 246[90] of [the] Tax Code, the Commissioner of Internal Revenue is precluded from adopting a position contrary to one previously taken where injustice would result to the taxpayer. Hence, where an assessment for deficiency withholding income taxes was made, three years after a new BIR Circular reversed a previous one upon which the taxpayer had relied upon, such an assessment was prejudicial to the taxpayer. To rule otherwise, opined the Court, would be contrary to the tenets of good faith, equity, and fair play.
>
> [The Supreme] Court has consistently reaffirmed its ruling in *ABS-CBN Broadcasting Corp.* in the later cases of *Commissioner of Internal Revenue v. Borroughs, Ltd., Commissioner of Internal Revenue v. Mega Gen. Mdsg. Corp.[,] Commissioner of Internal Revenue v. Telefunken Semiconductor (Phils.) Inc., and Commissioner of Internal Revenue v. Court of Appeals.* The rule is that the BIR rulings have no retroactive effect where a grossly unfair deal would result to the prejudice of the taxpayer, as in this case.
>
> More recently, in *Commissioner of Internal Revenue v. Benguet Corporation*, wherein the taxpayer was entitled to tax refunds or credits based on the BIR's own issuances but later was suddenly saddled with deficiency taxes due to its subsequent ruling changing the category of the taxpayer's transactions for the purpose of paying its VAT, [the Supreme] Court ruled that applying such ruling retroactively would be prejudicial to the taxpayer.[91]

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88 *Commissioner of Internal Revenue v. Benguet Corporation*, G.R. Nos. 134587-88, July 8, 2005; *Commissioner of Internal Revenue v. Court of Appeals*, G.R. No. 117982, February 6, 1997; *Commissioner of Internal Revenue v. Telefunken Semiconductor (Phils.) Inc.*, G.R. No. 103915, October 23, 1995; *Commissioner of Internal Revenue v. Mega Gen. Mdsg. Corp.*, G.R. No. 59315, September 30, 1988; *Commissioner of Internal Revenue v. Borroughs, Ltd.*, G.R. No. 66653, June 19, 1986; and *ABS-CBN Broadcasting Corp. v. Court of Tax Appeals*, G.R. No. 52306, October 12, 1981.

89 G.R. No. 168129, April 24, 2007.

90 SEC. 246. *Non-Retroactivity of Rulings.* - Any revocation, modification or reversal of any of the rules and regulations promulgated in accordance with the preceding Sections or any of the rulings or circulars promulgated by the Commissioner shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers, except in the following cases:
(a) Where the taxpayer deliberately misstates or omits material facts from his return orany document required of him by the Bureau of Internal Revenue;
(b) Where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or
(c) Where the taxpayer acted in bad faith.

91 Footnotes omitted.

JTKC BIR Ruling expressly recognized that the allocation and delivery of, among others, residential condominium units to petitioner and investors, including the appurtenant parking spaces per PIAs are **not: (1) taxable events; and (2) subject to income tax or withholding tax.** Petitioner relied on such ruling in good faith in structuring and implementing the subject transactions; hence, respondent cannot, by the subsequent issuance of RMC No. 55-2010, retroactively deprive petitioner of the favorable tax treatment accorded under JTKC BIR Ruling.

RMC No. 55-2010 was intended solely to revoke the specific BIR Rulings issued to G&W Architects, and the condominium projects covered thereby.

This conclusion is further reinforced by the clarification of then Commissioner of Internal Revenue Joel Tan-Torres, the *author* of RMC No. 55-2010. He explained that RMC No. 55-2010 was intended solely to revoke the specific BIR Rulings issued to G&W Architects, and the condominium projects covered thereby. It was never intended to revoke other BIR rulings, such as JTKC BIR Ruling issued to petitioner. Particularly, then CIR Tan-Torres stressed that only the ruling specifically identified in RMC No. 55-2010 were covered by the revocation, and that the RMC does not extend to rulings not expressly enumerated therein. Thus:[92]

Question 9:	**I am showing to you a copy of Revenue Memorandum Circular No. 55-2010. Will you able to confirm if you issued said circular?**
Answer:	**Yes, I issued that Revenue Memorandum Circular No. 55-2010.**
....	
Question 12:	What BIR Rulings were referred to as revoked in Memorandum Circular 55-2010, if you can recall or identify?

[92] Exhibit "P-32," Docket - Vol. IV, pp. 1971 to 1998.

Answer:	RMC 55-2010 circularized or made known the revocation of six (6) BIR Rulings issued to various condominium corporations or projects namely Penhurst Parkplace Condominium, Kensington Place Condominium, which has two (2) BIR rulings revoked, Sapphire Residences, Blue Sapphire Residences Condominium, and Grand Hamptons Place Condominium. These are all properly identified in in RMC 55-2010.
Question 13:	Did RMC 55-2010 revoke other BIR Rulings at that time?
Answer:	No, it did not revoke other BIR Rulings. Only those identified in RMC 55-2010 were revoked by it. The revocation of said BIR Rulings does not extend further to other BIR Rulings which are not identified in said RMC 55-2010. The RMC, as I said, specifically identifies the rulings revoked and states the basis for revocation, which basis was established after a specific investigation and report was produced. The investigation and report cannot affect other rulings not mentioned or investigated because the investigation and report are due process requirement.
Question 14:	Was it intended to revoke other BIR rulings?
Answer:	No. RMC 55-2010 expressly states, and I quote, "(t)he revocation of the abovementioned rulings is hereby circularized for the guidance and information of all revenue district offices. All concerned are hereby enjoined to report similar schemes for appropriate investigation, and to give this circular as wide a dissemination as possible.[93]

Relevantly, *Development Bank of the Philippines v. Commission on Audit (DBP)*[94] decreed that "[i]t is a settled rule of statutory construction that **the express mention of one person**, thing, act, or consequence **excludes all others**. This rule is expressed in the familiar maxim *expressio unius est exclusio alterius*. **Where a statute, by its terms,**

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93 Exhibit "P-32," Docket – Vol. IV, pp. 1971 to 1998. Boldfacing supplied.

94 G.R. No. 221706, March 13, 2018. Boldfacing ours.

is expressly limited to certain matters, it may not, by interpretation or construction, be extended to others. The rule proceeds from the premise that the legislature would not have made specified enumerations in a statute had the intention been not to restrict its meaning and to confine its terms to those expressly mentioned."

Following *DBP,* RMC No. 55-2010 expressly revoked only the BIR rulings issued to G&W Architects. Likewise, the findings of misrepresentation that served as the basis for their revocation pertained solely to G&W Architects and the transactions covered by those rulings. They cannot, by interpretation be extended to petitioner or to BIR Ruling No. DA-(JV-023) 178-08.

In fine, petitioner may validly invoke BIR Ruling No. 178-08. RMC No. 55-2010 does *not* render said ruling inoperative. In view thereof, petitioner was entitled to rely in good faith on paragraph 4 of BIR Ruling No. 178-08 which states:

> 4. The consequent **allocation and delivery of** serviced apartments to Aldex and **residential condominium units to [petitioner] JTKC and the Investors, and their appurtenant parking spaces,** in consideration of their respective contributions, as stipulated in the Joint Venture Agreement and the Project Investment Agreements, respectively, **is likewise not a taxable event. The delivery of the properties is <u>not</u> subject to** income tax or **any withholding tax because the allocation is a mere return of capital that each has contributed.** (**BIR Ruling No. DA-455-2007 dated August 17, 2007**).[95]

Accordingly, on the strength of BIR Ruling No. 178-08, the 2008 to 2010 assessments for withholding tax others (ONETT) per BIR's FLD/FAN, rooted on the PIAs between petitioner and its investors, should be cancelled and withdrawn.

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[95] Boldfacing supplied.

The BIR's withholding tax assessments and compromise penalties for TYs 2008 to 2010 lack legal and factual basis.

Section 228 of the NIRC, as amended requires that a taxpayer be informed in writing of both the factual and legal bases of an assessment; otherwise, the assessment is void:

> SEC. 228. *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: ...
>
> ...
>
> The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> ...

In respondent's FAN dated April 12, 2017, and corresponding Details of Discrepancies, petitioner was assessed for 2008 to 2010 expanded withholding tax others (ONETT), in the follow fashion:

> **FORMAL ASSESSMENT NOTICE**
> **(Part I)**
>
> ...
>
> Please be informed that after investigation, there has been found due from deficiency Withholding Tax-Others (ONETT transaction not subject to CGT) for the taxable years 2008, 2009 & 2010 in the total amount of P46,618,216.43 inclusive of increments pursuant to eLetter of Authority (eLA) No. 80582 dated February 12, 2015, as shown hereunder:

WITHHOLDING TAX-OTHERS (ONETT)		**P 37,878,032.60**
BASIC WITHHOLDING TAX DUE		**20,443,911.30**
LESS: PAYMENT		**P 17,434,121.30**
BASIC DEFICIENCY TAX DUE-SCHEDULE 1, 2 & 3		
SURCHARGE (25%)	P 4,358,530.33	
INTEREST (Refer to Schedule 1-3 of the Details of Discrepancies)	24,825,564.80	29,184,095.13
TOTAL AMOUNT STILL DUE		**P 46,618,216.43**

> ...

DETAILS OF DISCREPANCIES

WITHHOLDING TAX-OTHERS (ONETT)

Verification disclosed that the Units described hereunder, which has been sold under Project Investment Agreement (PIA) have been partially paid but no withholding tax and withholding tax return was remitted/filed to the BIR, such being the case, the same is hereby assessed pursuant to the provisions of **Revenue Regulations (RR) 2-98, as amended, in relation to Section 4 of RR 17-2003.**[96]

This is empty of legal and factual foundation.

In *Chamber of Real Estate and Builders' Association, Inc. v. Romulo,*[97] the Supreme Court *En Banc* explained that "[t]he withholding tax system is a procedure through which taxes (including income taxes) are collected. Under Section 57 of RA 8424, the types of income subject to withholding tax are divided into three categories: (a) withholding of final tax on certain incomes; (b) withholding of creditable tax at source and (c) tax-free covenant bonds...." Relevantly, paragraphs (A) and (B) thereof speak of the persons who are required to withholding taxes, *viz.*:

Section 57. *Withholding of Tax at Source.* -

(A) Withholding of Final Tax on Certain Incomes. - Subject to rules and regulations the Secretary of Finance may promulgate, upon the recommendation of the Commissioner, requiring the filing of income tax return by certain income payees, the tax imposed or prescribed by Sections 24(B)(1), 24(B)(2), 24(C), 24(D)(1); 25(A)(2), 25(A)(3), 25(B), 25(C), 25(D), 25(E), 27(D)(!), 27(D)(2), 27(D)(3), 27(D)(5), 28 (A)(4), 28(A)(5), 28(A)(7)(a), 28(A)(7)(b), 28(A)(7)(c), 28(B)(1), 28(B)(2), 28(B)(3), 28(B)(4), 28(B)(5)(a), 28(B)(5)(b), 28(B)(5)(c); 33; and 282 of this Code on specified items of income **shall be withheld by payor-corporation and/or person and paid in the same manner and subject to the same conditions as provided in Section 58 of this Code.**

(B) *Withholding of Creditable Tax at Source.* - The Secretary of Finance may, upon the recommendation of the Commissioner, **require the withholding of a tax** on the items of income payable to natural or juridical persons, residing in the Philippines, **by payor-**

96 Boldfacing supplied.
97 G.R. No. 160756, March 9, 2010.

> **corporation/persons** as provided for by law, at the rate of not less than one percent (1%) but not more than thirty-two percent (32%) thereof, which shall be credited against the income tax liability of the taxpayer for the taxable year.[98]

Significantly, in *AFP General Insurance Corporation v. Commissioner of Internal Revenue (AGIC),*[99] the Supreme Court held that a person may be held liable for withholding taxes, like EWT, in its *capacity* as *withholding agent* of the government, *viz.*:

> The CIR issued a *deficiency EWT* assessment against AGIC in its capacity as a *withholding agent.* Enterprises such as AGIC are legally obliged under Section 57 of the Tax Code to deduct in advance a percentage of tax from his payment to a third party and remit the same to the government. The third party, from whom the taxpayer purchased a good/service, is the actual income earner in the transaction. Although acting merely as an agent of the government in the collection of taxes, a withholding entity who fails to deduct and remit as required shall be liable for deficiency withholding tax, such as EWT.[100]

AGIC decreed that EWT is exacted on a person in its capacity as withholding agent. Before a person may even be considered as withholding agent, Section 57 of the NIRC, as amended, enjoins that said person **must** be the income **payor**. Yet, the BIR's formal assessment portrayed petitioner as the income **payee**; hence the BIR cannot hold petitioner liable for deficiency *withholding* tax (EWT).

Here, the BIR's formal assessment treated the PIAs between petitioner and its investors as one of sale. Under this theory, petitioner was characterized as the income **payee** that sold condominium units to its investors, who were deemed as income **payors**. Consequently, the investors, not petitioner would be the parties allegedly responsible to withhold and remit the withholding taxes. To hold petitioner liable for withholding taxes despite being characterized by the BIR itself as the income **payee** is contrary to Section 57 of the NIRC, as amended, and *AGIC*. This inconsistency further justifies the cancellation of the deficiency withholding tax assessments for TYs 2008 to 2010.

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98 Boldfacing supplied.
99 G.R. No. 222133, November 4, 2020.
100 Underscoring supplied.

The compromise penalty, too, imposed by the BIR against petitioner in the amount of ₱375,000.00[101] should be invalidated, because it never consented to its imposition. Indeed, the imposition of the compromise penalty without the conformity of the taxpayer is illegal and unauthorized.[102] It implies agreement. One party cannot impose it upon the other.[103]

Suspension of collection of deficiency withholding tax-others and penalty in petitioner's favor.

In *Commissioner of Internal Revenue v. Robinson's Convenience Stores, Inc. (RCSI)*[104] the Supreme Court held that "... the CTA may also suspend tax collection and waive the bond requirement *as part of its **main decision** on the merits, as a necessary consequence of cancelling an assessment.* The order of suspension forms part of the CTA's complete adjudication of the disputed assessment, not merely an interlocutory matter therein."

An adverse judgment to the national government was rendered in this case on several grounds: (a) the withholding tax assessments for TYs 2008 and 2009 were declared void for having been issued without a valid LOA; (b) the withholding tax assessment for TY 2010 was likewise nullified for failure of the BIR to state the factual and legal bases thereof as required under Section 228 of the NIRC, as amended. Further, the BIR's assessment theory treated petitioner as the income payee; thus, holding petitioner liable for withholding taxes is contrary to Section 57 of the NIRC, as amended, which imposes the withholding obligation upon the income payor; and (c) petitioner was justified in relying on BIR Ruling DA-(JV-023) 178-08, which is the BIR's official position that the allocation and delivery of the condominium units pursuant to the PIAs did not constitute taxable events.

Consistent with Section 13 of RA No. 9282, and the doctrine laid down in *RCSI*, the suspension of collection of these taxes and compromise penalty is in order.

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101 Exhibit "R-7," BIR Records, pp. 245.
102 *Commissioner of Internal Revenue v. Liangga Bay Logging Co., Inc*, G.R. No. 35266, January 21, 1999.
103 *Commissioner of Internal Revenue v. Abad, et al.*, G.R. No. L-19627, June 27, 1968.
104 G.R. No. 259968, August 27, 2025. Emphases in the original.

WHEREFORE, the Petition for Review filed by JTKC Land, Inc. is **GRANTED.**

Accordingly, the subject assessments finding petitioner liable for deficiency withholding tax-others and compromise penalty in the amounts of ₱51,592,945.03 and ₱375,000.00, respectively, for taxable years 2008, 2009 and 2010, are **CANCELLED** and **SET ASIDE**.

The FDDA dated February 11, 2019, which assessed petitioner for deficiency withholding tax-others and compromise penalty in the aforesaid amounts inclusive of surcharges and interests, is likewise **REVERSED** and **SET ASIDE**.

Further, respondent or any person acting on his behalf is **PROHIBITED** and **ENJOINED** from enforcing or collecting on JTKC Land, Inc., the 2008, 2009 and 2010, deficiency withholding tax-others and assessments and penalties.

SO ORDERED.

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

I CONCUR:

HENRY S. ANGELES
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.

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice