



**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

SPECIAL FIRST DIVISION

CTA CASE NO. 10956

KFC ASIA HOLDINGS LLC,
Petitioner,

- versus -

NOTICE OF DECISION

**COMMISSIONER OF INTERNAL
REVENUE,**
Respondent.

To:

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

ATTY. AYESHA HANIA B. GUILING-MATANOG
ATTY. KARL KENNY M. RAMO
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Building
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

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

GREETINGS:

You are hereby notified by these presents that on **September 15, 2026**, a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **September 18, 2026.**


Atty. Mary Grace S. Ringpis
Executive Clerk of Court II

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

SPECIAL FIRST DIVISION

KFC ASIA HOLDINGS LLC, **CTA CASE NO. 10956**

Petitioner, Members:

- versus -

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

**COMMISSIONER OF
INTERNAL REVENUE,**
Respondent.

Promulgated:

SEP 15 2026; 10:30AM

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DECISION

CUI-DAVID, J.:

Before the Court is a *Petition for Review* (of *Petitioner KFC Asia Holdings LLC*)¹ [***Petition for Review***] filed on August 11, 2022,² praying for the refund or issuance of tax credit certificate in the amount of ₱44,064,664.22, allegedly representing petitioner's claim for excessively and/or erroneously paid taxes for the period of January 2020 to April 2020,³ and June 2020.⁴

THE PARTIES

Petitioner KFC Asia Holdings LLC (**petitioner**) is a limited liability company organized and existing under the laws of the United States of America (USA). Its principal office is at 7100 Corporate Drive, Plano, Texas 75024, USA.⁵ It is a resident of the USA for USA tax purposes for taxable year 2020.⁶ It is registered with the Bureau of Internal Revenue (**BIR**), Revenue

¹ Docket – Vol. I, pp. 43–76.

² Posted on August 11, 2022 and received by the Court on August 18, 2022, Docket – Vol. I, p. 43.

³ Docket – Vol. II, p. 860, Pre-Trial Order dated May 26, 2023, Summary of the Case.

⁴ Refer to Exhibit “46”, Docket – Vol. II, at pp. 1251–1253.

⁵ Docket – Vol. II, pp. 846–847, *Joint Stipulation of Facts and Issues* (JSFI), Stipulation of Facts, par. 1; Exhibit “P-23”, Docket – Vol. II, pp. 1426–1440.

⁶ Exhibit “P-24”, Docket – Vol. II, pp. 1441–1442.



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District Office No. 39, as a non-resident foreign corporation with Taxpayer Identification Number 768-029-024-00000.⁷ However, petitioner is not registered as a corporation, partnership, or one-person corporation in the Philippines.⁸

Respondent Commissioner of Internal Revenue (**CIR** or **respondent**) is vested by the National Internal Revenue Code (**NIRC**) of 1997, as amended, with the authority to decide, approve, and grant tax refunds.⁹

THE FACTS

On August 8, 2022, petitioner filed its letter *Application for Tax Treaty Relief with Request of Excess Tax Payments* dated August 5, 2022,¹⁰ with its *Application for Treaty Purposes (Relief from Philippine Income Tax on Royalties)* [BIR Form No. 0901-R],¹¹ and *Application for Refund of Excess Withholding Tax in Accordance with the Double Taxation Convention* (BIR Form No. 1913),¹² with the BIR – International Tax Affairs Division (**ITAD**), relative to its claim for refund or credit of alleged erroneously or excessively paid final withholding tax (**FWT**), in the amount of ₱44,064,664.22,¹³ representing the difference between the amount remitted to the BIR by petitioner's Franchisees and the amount which should only be paid by petitioner.

As stated earlier, on August 11, 2022, petitioner filed the present *Petition for Review (of Petitioner KFC Asia Holdings LLC)*.¹⁴

On November 2, 2022, respondent filed his *Answer (Re: Petition for Review dated 11 August 2022)* [**Answer**],¹⁵ interposing the following special and affirmative defenses, to wit: (1) respondent's administrative power has been disregarded by petitioner; thus, the latter failed to exhaust administrative remedies; (2) petitioner is not entitled to treaty benefits and consequently to the claim for refund of income tax withheld; and (3) tax refund must be strictly construed.

⁷ Exhibit "P-58", Docket – Vol. II, p. 1478.

⁸ Exhibit "P-26", BIR Records, p. 71.

⁹ Docket – Vol. II, p. 847, JSFI, Stipulation of Facts, par. 2.

¹⁰ Exhibit "P-37", Docket – Vol. II, pp. 1452–1462.

¹¹ Exhibit "P-38", Docket – Vol. II, p. 1463–1465.

¹² Exhibit "P-39", Docket – Vol. II, p. 1466.

¹³ Actual amount of petitioner's request for refund filed with the International Tax Affairs Division was ₱44,138,238.13.

¹⁴ Docket – Vol. I, pp. 43–76.

¹⁵ Docket – Vol. II, pp. 792–811.



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On November 3, 2022, respondent transmitted the BIR Records of this case, consisting of one folder, consecutively numbered as pages 1 to 387.¹⁶

The Pre-Trial Conference was set and held on March 16, 2023.¹⁷ Prior thereto, *Respondent's Pre-Trial Brief* was filed on March 9, 2023,¹⁸ while the *Pre-Trial Brief (of Petitioner KFC Asia Holdings LLC)* was submitted on March 13, 2023.¹⁹

On April 17, 2023, the parties submitted their *Joint Stipulation of Facts and Issues*,²⁰ which was admitted and approved by the Court in its Resolution dated April 20, 2023,²¹ thereby deeming the termination of the pre-trial. The Pre-Trial Order dated May 26, 2023 was then issued.²²

As trial ensued, petitioner offered the testimonies of the following individuals, namely: (1) Atty. Joshua Paul S. Angustia,²³ Associate Counsel of Santiago and Santiago Law Offices, assigned to petitioner; (2) Ms. Roselle Y. Caraig,²⁴ Tax Partner in Isla Lipana & Co., who provides tax consultancy and other services to petitioner; (3) Ms. Jessica Holleran,²⁵ petitioner's President; and (4) Mr. Lucky Francis P. Felipe,²⁶ the Court-commissioned Independent Certified Public Accountant (ICPA).²⁷

The *Report* of the ICPA was submitted on December 27, 2023.²⁸

On February 20, 2024, petitioner filed its *Extremely Urgent Motion with Leave of Court to Present an Additional Witness and to Request for Additional Hearing Date*.²⁹ During the hearing held on February 21, 2024,³⁰ the Court denied

¹⁶ *Id.* at 813–815, Respondent's *Compliance* dated November [3], 2022.

¹⁷ *Id.* at 817–818, Notice of Pre-Trial Conference dated November 8, 2022; 837–840, Minutes of hearing held on, and Orders dated, March 16, 2023.

¹⁸ *Id.* at 820–823.

¹⁹ *Id.* at 826–836.

²⁰ *Id.* at 846–857.

²¹ *Id.* at 859.

²² *Id.* at 860–865.

²³ Exhibit "P-43", Docket – Vol. I, pp. 304–317; Docket – Vol. II, pp. 974–979, Minutes of hearing held on, and Order dated, September 12, 2023.

²⁴ Exhibit "P-42", Docket – Vol. I, pp. 394–404; Docket – Vol. II, pp. 974–979, Minutes of hearing held on, and Order dated, September 12, 2023.

²⁵ Exhibit "P-44", Docket – Vol. II, pp. 943–951; Docket – Vol. II, pp. 1209–1213, Minutes of the hearings held on, and Order dated, October 13, 2023.

²⁶ Exhibits "P-57" and "P-59", Docket – Vol. II, pp. 1267–1281, and 1285–1289, respectively; Docket – Vol. II, pp. 1296–1299, Minutes of hearing held on, and Orders dated, dated February 21, 2024.

²⁷ Docket – Vol. II, p. 1232, *Oath of Commission* dated November 9, 2023; Docket – Vol. II, pp. 1234–1235, Order dated November 9, 2023.

²⁸ Exhibit "P-46", Docket – Vol. II, pp. 1249–1259.

²⁹ Docket – Vol. II, pp. 1291–1294.

³⁰ *Id.* at 1296–1299, Minutes of hearing held on, and Orders dated, dated February 21, 2024.

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petitioner's *Extremely Urgent Motion with Leave of Court* and noted respondent's manifestation that he will no longer present any witness.

Thus, on March 7, 2024, petitioner filed its *Motion with Leave of Court I. for Reconsideration re[:]* 21 February 2024 Resolution of the Honorable Court of Tax Appeals – First Division II. for the Issuance of Subpoena Duces Tecum III. for Deferral of the Filing of the Formal Offer of Evidence,³¹ to which respondent filed his *Comment/Opposition (on Motion with Leave of Court I. for Reconsideration re 21 February 2024 Resolution of the Honorable Court of Tax Appeals- First Division II. for the Issuance of Subpoena Duces Tecum III. for the Deferral of the Filing of the Formal Offer of Evidence)*.³² In the Resolution dated July 9, 2024,³³ the Court granted petitioner's *Motion with Leave of Court I. for Reconsideration re[:]* 21 February 2024 Resolution of the Honorable Court of Tax Appeals – First Division and III. for the Deferral of the Filing of the Formal Offer of Evidence, however, the Court denied its *Motion with Leave of Court II. for the Issuance of Subpoena Duces Tecum*.

In the meantime, on March 8, 2024, petitioner filed its *Formal Offer of Evidence Ad Cautelam [with Manifestation]*,³⁴ to which respondent filed his *Comment (on Petitioner's Formal Offer of Evidence Ad Cautelam [with Manifestation])* on March 22, 2024.³⁵

On August 14, 2024, petitioner presented its additional witnesses, to wit: (1) Mr. Eugene Jerome V. Tan,³⁶ Director for Cybersecurity and Privacy at PwC Philippines – Isla Lipana & Co.; and (2) Mr. John Julius B. Ganzon,³⁷ Project Manager for Digital Solutions Development at PwC Philippines – Isla Lipana & Co. Moreover, on January 30, 2025, petitioner presented its recalled witness, Ms. Jessica Holleran.³⁸



³¹ *Id.* at 1307–1315.

³² Docket – Vol. III, pp. 1489–1494.

³³ *Id.* at 1500–1507.

³⁴ Docket – Vol. II, pp. 1325–1341.

³⁵ Docket – Vol. III, pp. 1480–1483.

³⁶ Exhibit “P-62”, Docket – Vol. III, pp. 1517–1525; Docket – Vol. III, pp. 1704–1706, Order dated August 14, 2024.

³⁷ Exhibit “P-65”, Docket – Vol. III, pp. 1619–1626; Docket – Vol. III, pp. 1704–1706, Order dated August 14, 2024.

³⁸ Exhibits “P-69”, and “P-70”, Docket – Vol. III, pp. 1738–1748, and 1922–1928, respectively; Docket – Vol. III, pp. 1983–1986, Minutes of the hearings held on, and Order dated, January 30, 2025.

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Thereafter, on February 13, 2025, petitioner filed its *Supplemental Formal Offer of Evidence*,³⁹ to which respondent filed his *Comment (on Petitioner's Supplemental Formal Offer of Evidence)* on February 18, 2025.⁴⁰

In the Resolution dated July 7, 2025,⁴¹ the Court admitted all petitioner's offered exhibits in its *Formal Offer of Evidence* and *Supplemental Formal Offer of Evidence*.

On August 11, 2025, the *Memorandum (of Petitioner KFC Asia Holdings LLC)* was filed,⁴² while respondent filed his *Manifestation* on August 13, 2024,⁴³ stating that he will adopt the arguments raised in his *Answer* dated October 28, 2022 as his Memorandum.

The present case was submitted for decision on September 16, 2025.⁴⁴

THE ISSUES

The parties have stipulated that the issues to be resolved by the Court are as follows:

1. Whether or not Petitioner is entitled to a cash refund in the amount of **Forty Four Million Sixty Four Thousand Six Hundred Sixty Four Pesos and Twenty Two Cents (Php44,064,664.22)** allegedly for its excessively and/or erroneously paid income taxes for the period of January 2020 to April 2020 and June 2020, representing the difference between final tax withheld by Petitioner's Franchisees, applying 30% final withholding tax rate pursuant to the "most favored nation" clause under the Convention between the Government of the Republic of the Philippines and the Government of the United States of America ('RP-US Tax Treaty').
2. Whether or not the Court has jurisdiction over the instant case.⁴⁵



³⁹ Docket – Vol. IV, pp. 1991–2001.

⁴⁰ *Id.* at 2106–2108.

⁴¹ *Id.* at 2116–2117.

⁴² *Id.* at 2118–2148.

⁴³ *Id.* at 2151–2153.

⁴⁴ *Id.* at 2157, Notice of Resolution dated September 16, 2025.

⁴⁵ Docket – Vol. II, p. 861, Pre-Trial Order, B. Stipulation of Issues; 847, JSFI, Stipulation of Issue.

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Petitioner's arguments:

Petitioner argues that it erroneously paid ₱44,064,664.22, representing the difference between the final tax withheld by its franchisees, applying the 30% FWT rate, and the 10% FWT rate pursuant to the "most-favored-nation" clause under the Convention between the Government of the Republic of the Philippines and the Government of the United States of America (**RP-US Tax Treaty**); and that the Court has jurisdiction over its refund claim of excess and erroneously paid FWT for the covered period.

Respondent's counter-arguments:

Respondent, in his *Answer*, contends that his administrative power has been disregarded by petitioner; thus, the latter failed to exhaust administrative remedies; that petitioner is not entitled to treaty benefits and consequently to the claim for refund of income tax withheld; and that the tax refund must be strictly construed.

THE COURT'S RULING

The present *Petition for Review* is impressed with merit.

Petitioner's administrative and judicial claims for refund are timely filed.

Sections 204(C) and 229 of the NIRC of 1997, as amended, read:

SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* — The Commissioner may —

....

(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with**



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the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided, however,* that a return filed showing an overpayment shall be considered as a written claim for credit or refund. (Emphasis supplied)

SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* — No suit or proceeding shall be maintained in any court for the recovery of any national **internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected,** until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid. (Emphases supplied)

The aforequoted provisions are clear: within two years from the date of payment of tax, the claimant must first file an administrative claim with respondent before filing its judicial claim with the courts of law. **Both claims must be filed within a two-year reglementary period. Timeliness of the filing of the claim is mandatory and jurisdictional,** and thus, the Court cannot take cognizance of a judicial claim for refund filed either prematurely or out of time.⁴⁶ Hence, so long as the judicial claim was filed within two years from the date of payment of the tax or penalty, and within such period, an administrative claim was filed before filing such judicial claim, this Court has jurisdiction to entertain the latter.

Moreover, the foregoing provisions allow the recovery of taxes erroneously or illegally collected. An “erroneous or illegal tax” is defined as one levied without statutory authority, or upon property not subject to taxation, or by some officer

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⁴⁶ *Commissioner of Internal Revenue v. San Miguel Corporation, et seq.*, G.R. Nos. 180740 & 180910, November 11, 2019 [Per J. Hermendo, Second Division].

having no authority to levy the tax, or one which is some other similar aspect is illegal.⁴⁷

Thus, for the present claim for refund to prosper, petitioner must not only establish that it has timely filed its refund claim, but it must also likewise prove that the subject FWTs paid fall under the above-stated definition of “erroneous or illegal tax”.

The following dates are relevant and significant to the subject claim for refund:

Date of payment of FWT	Last day of two-year period to file claim for refund	Date of filing of administrative claim for refund	Date of filing of judicial claim for refund
Aug. 13, 2020 ⁴⁸	Aug. 13, 2022	Aug. 8, 2022 ⁴⁹	Aug. 11, 2022 ⁵⁰
Aug. 13, 2020 ⁵¹	Aug. 13, 2022		
Aug. 11, 2020 ⁵²	Aug. 11, 2022		
Aug. 13, 2020 ⁵³	Aug. 13, 2022		
Aug. 13, 2020 ⁵⁴	Aug. 13, 2022		

Considering that the administrative claim for refund of petitioner’s FWT payments was filed on August 8, 2022, and the judicial claim was filed on August 11, 2022, the present claim for refund was timely filed within the two-year prescriptive period.

However, in his *Answer*, respondent argues that the *Petition for Review* should be dismissed because petitioner failed to exhaust administrative remedies available to it when it elevated the case to this Court without giving respondent the opportunity to resolve the issues. He stresses that petitioner filed its tax treaty relief application simultaneously with its claim for administrative refund with the ITAD of the BIR on August 8, 2022; thereafter, on August 12, 2022, only four days after filing the tax treaty relief application and claim for refund, it filed its *Petition for Review*. He states that, with only four days left to decide the case, he was not given ample time

⁴⁷ *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*, G.R. No. 188497, April 25, 2012 [Per J. Villarama, Jr., First Division], citing the definition provided in BLACK’S LAW DICTIONARY, Fifth Edition, p. 486.
⁴⁸ Exhibits “P-13” and “P-18”, Docket – Vol. II, pp. 1411–1412, and 1421, respectively.
⁴⁹ Exhibit “P-39”, Docket – Vol. II, p. 1466.
⁵⁰ Docket – Vol. I, pp. 43–76.
⁵¹ Exhibits “P-14” and “P-19”, Docket – Vol. II, pp. 1413–1414, and 1422, respectively.
⁵² Exhibits “P-15” and “P-20”, Docket – Vol. II, pp. 1415–1416, and 1423, respectively.
⁵³ Exhibits “P-16” and “P-21”, Docket – Vol. II, pp. 1417–1418, and 1424, respectively.
⁵⁴ Exhibits “P-17” and “P-22”, Docket – Vol. II, pp. 1419–1420, and 1425, respectively.

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to study and decide it, and therefore there was a disregard of respondent's administrative power. According to the respondent, although the case was filed within the prescribed two-year period, the claim was filed with the BIR only four days before the expiration of that period, thereby violating the exhaustion of administrative remedies.

On the other hand, petitioner asserts that this Court has jurisdiction over its refund claim of excess and erroneously paid FWT for the covered period, as: (1) it was able to file the administrative claim with the respondent; and (2) both the administrative and judicial claims were filed within the two-year period pursuant to Sections 204 (C) and 229 of the Tax Code.

The Court agrees with petitioner.

In *Commissioner of Internal Revenue v. Estate of Mr. Charles Marvin Romig*, represented by its Sole Heir Mrs. Maricel Narciso Romig (**Romig**),⁵⁵ the Supreme Court ruled as follows:

Sections 204 and 229 of the 1997 NIRC provide for the refund of erroneously or illegally collected taxes. **Section 204 applies to administrative claims for refund, while Section 229 to judicial claims for refund.** Said provisions state:

....

Based on the above-quoted provisions, it is manifestly clear that **an administrative claim for refund must precede the filing of a judicial claim and that both claims must be filed within the two years from the payment of the tax.** In the instant case, the two-year period to file a claim for refund is reckoned from June 30, 2015, the date respondent paid the estate tax amounting to PHP 4,565,439.07. Since the Estate first filed its administrative claim at 8:00 a.m. on June 28, 2017, and thereafter its judicial claim at 4:47 p.m. on even date, both claims were filed on time or within the two-year prescriptive period provided by law.

It is of no moment that there is only a short interval between the filing of the two claims. The law merely requires that both claims are filed within the two-year period. In *Commissioner of Internal Revenue v. Carrier Air Conditioning Philippines, Inc.*,⁵⁶ where therein

⁵⁵ G.R. No. 262092, October 9, 2024 [Per J. Hernando, First Division].

⁵⁶ G.R. No. 226592, July 27, 2021 [Per J. Leonen, *En Banc*].



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petitioner similarly argued that the judicial claim for refund, which was filed barely 10 days from the filing of the administrative claim, was premature and violative of the doctrine of exhaustion of administrative remedies, this Court held that, **'from the plain language of the law, it does not matter how far apart the administrative and judicial claims were filed, or whether the [CIR] was actually able to rule on the administrative claim, so long as both claims were filed within the two-year prescriptive period.'**

Moreover, the Court agrees with the finding of the CTA Second Division and CTA *En Banc* that the Estate's **immediate resort to court action was justified, considering that the prescriptive period was about to expire.** Under the circumstances, if the Estate had waited for the CIR to act on its administrative claim knowing fully well that the two-year period was about to lapse, it would have resultantly forfeited its right to seek judicial recourse, thereby suffering irreparable damage. Hence, respondent cannot be faulted for acting in such a manner to protect its interest and right to recover the taxes it erroneously paid to the government.

While the Court recognizes that the CIR may not have had the proper chance to act on the matter within their jurisdiction because of the short period of time between the filing of the two claims, the silence or insufficiency in the law on what is to be considered a reasonable period for the CIR to resolve a claim for refund of taxes is one that can be addressed not by judicial pronouncement, but by appropriate legislation."
(Emphasis and underscoring supplied)

The foregoing jurisprudential pronouncements confirm that the law merely requires that both claims are filed within the two-year reglementary period. Thus, so long as the said claims are lodged within such period, the judicial claim may be taken cognizance of by this Court. And this holds true even when the filing of the administrative claim and subsequently, the judicial claim, are merely hours apart, such as in *Romig*.

Moreover, even the Supreme Court recognizes that respondent may not have had the proper chance to act on the matter within their jurisdiction because of the short period of time between the filing of the two claims, it held that the silence or insufficiency in the law on what is to be considered a reasonable period for respondent to resolve a claim for refund of taxes is one that can be addressed not by judicial pronouncement, but by appropriate legislation.



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Thus, since the two-year prescriptive period was about to lapse, petitioner was justified in filing its judicial claim, without waiting for the respondent's decision, to protect its interest. It should be stressed that petitioner need not await the final resolution of its administrative claim for refund, since doing so would be tantamount to the petitioner's forfeiture of its right to seek judicial recourse should the two-year prescriptive period expire without the appropriate judicial claim being filed. Thus, petitioner's judicial claim filed within the two-year prescriptive period is proper and cannot be dismissed on the ground of failure to exhaust administrative remedies.

Petitioner is entitled to the preferential tax rate of 10% FWT on royalties.

Petitioner argues that it is entitled to the preferential rate of 10% FWT pursuant to the "most-favored-nation" clause of the RP-US Tax Treaty in relation to the RP-Czech Tax Treaty; thus, it overpaid its FWT by applying the 30% rate instead of the 10%.

Respondent alleges that petitioner must prove that it complied with all the requirements for entitlement of treaty benefits, which, in this case, petitioner failed to do so.

The Court finds merit in petitioner's contention.

Section 28(B)(1) and (5)(b) of the NIRC of 1997, as amended, reads as follows:

SEC. 28. *Rates of Income Tax on Foreign Corporations.*

—

....

(B) *Tax on Nonresident Foreign Corporation. —*

(1) *In General. —* **Except as otherwise provided in this Code, a foreign corporation not engaged in trade or business in the Philippines shall pay a tax equal to thirty-five percent (35%) of the gross income received during each taxable year from all sources within the Philippines, such as** interests, dividends, rents, **royalties**, salaries, premiums (except reinsurance premiums), annuities, emoluments or other fixed or determinable

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annual, periodic or casual gains, profits and income, and capital gains, except capital gains subject to tax under subparagraph 5(c): ***Provided, That effective January 1, 2009, the rate of income tax shall be thirty percent (30%).*** (Emphasis and underscoring supplied)

Based on the foregoing provisions, as a general rule, except as provided in the same NIRC of 1997, as amended, a foreign corporation not engaged in trade or business in the Philippines shall pay a tax equivalent to 30%⁵⁷ of the royalties earned.

However, Section 32(A)(6) and Section 32(B)(5) of the NIRC of 1997, as amended, provide as follows:

SEC. 32. *Gross Income.* –

(A) *General Definition.* — Except when otherwise provided in this Title, gross income means all income derived from whatever source, including (but not limited to) the following items:

....

(6) **Royalties;**

....

(B) *Exclusions from Gross Income.* – **The following items shall not be included in gross income and shall be exempt from taxation under this Title:**

....

(5) ***Income Exempt under Treaty.* – Income of any kind, to the extent required by any treaty obligation binding upon the Government of the Philippines.** (Emphases and underscoring supplied)

Based on the foregoing provision, an income may be exempted from taxation to the extent required by any treaty obligation binding upon the Government of the Philippines.

Based on the foregoing provisions, while the royalties may be subject to FWT, for being considered as gross income, the same may be exempted therefrom “*to the extent required by any treaty obligation binding upon the Government of the Philippines.*” Thus, the income tax rate of 30% can be further

⁵⁷ Beginning January 1, 2009.

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reduced through a treaty between the Philippines and another state. In the present case, the relevant treaty, as properly invoked by petitioner, is the RP-US Tax Treaty.

The RP-US Tax Treaty is among the bilateral treaties the Philippines has entered into to avoid double taxation. These international agreements aim to reconcile the national fiscal legislation of the contracting parties to help taxpayers avoid simultaneous taxation in two different jurisdictions. The rationale for doing away with double taxation is to encourage the free flow of goods and services and the movement of capital, technology and persons between countries, conditions deemed vital in creating robust and dynamic economies.⁵⁸

The purpose of a “Most Favored Nation” clause is to grant to the contracting party treatment not less favorable than that which has been or may be granted to the “most favored” among other countries. The “Most Favored Nation” clause is intended to establish the principle of equality of international treatment by providing that the citizens or subjects of the contracting nations may enjoy the privileges accorded by either party to those of the “Most Favored Nation.”⁵⁹ One of the “Most Favored Nation” clauses in the RP-US Tax Treaty can be found in Article 13 thereof,⁶⁰ quoted hereunder for ready reference:⁶¹

Article 13
ROYALTIES

1. Royalties derived by a resident of one of the Contracting States from sources within the other Contracting State may be taxed by both Contracting States.
2. However, the tax imposed by that other Contracting State shall not exceed –
 - a) In the case of the United States, 15 percent of the gross amount of the royalties, and
 - b) In the case of the Philippines, the least of:



⁵⁸ *Commissioner of Internal Revenue v. S.C. Johnson and Son, Inc., et al.*, G.R. No. 127105, June 25, 1999 [Per J. Gonzaga Reyes, Third Division].

⁵⁹ *Id.*

⁶⁰ The other is found under Article 9(1)(b) of the RP-US Tax Treaty.

⁶¹ Convention Between the Government of the Republic of the Philippines and the Government of the United States of America with Respect to Taxes on Income was signed in Manila on October 1, 1976. It entered into force on October 16, 1982, the thirtieth day following the exchange of the relevant instruments of ratification in Washington, United States on September 16, 1982. Its provisions on taxes apply on income derived or which accrued beginning January 1, 1983.

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- (i) 25 percent of the gross amount of the royalties,
 - (ii) 15 percent of the gross amount of the royalties, where the royalties are paid by a corporation registered with the Philippine Board of Investments and engaged in preferred areas of activities, and
 - (iii) **the lowest rate of Philippine tax that may be imposed on royalties of the same kind paid under similar circumstances to a resident of a third State.**
3. The term 'royalties' as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematographic films or films or tapes used for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or other like right or property, or for information concerning industrial, commercial or scientific experience. The term 'royalties' also includes gains derived from the sale, exchange or other disposition of any such right or property which are contingent on the productivity, use, or disposition thereof.
4. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the royalties, being a resident of a Contracting State carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State professional services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 8 (Business Profits) or Article 15 (Independent Personal Services), as the case may be, shall apply.
5. Where an amount is paid to a related person and would be treated as a royalty but for the fact that it exceeds an amount which would have been paid to an unrelated person, the provisions of this Article shall apply only to so much of the amount as would have been paid to an unrelated person. In such a case, the excess amount may be taxed by each Contracting State according to its own law, including the provisions of this Convention where applicable. (Emphasis supplied)

Petitioner submits that it is entitled to the preferential rate of 10% FWT pursuant to the above-quoted "most favored



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nation” clause of the RP-US Tax Treaty in relation to the RP-Czech Tax Treaty,⁶² Article 12 thereof provides as follows:

**Article 12
ROYALTIES**

1. **Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.**
2. However, **such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed:**
 - a) **10 percent of the gross amount of the royalties arising from the use of, or the right to use,** any copyright of literary, artistic or scientific work, other than that mentioned in sub-paragraph (b), any patent, trade mark, design or model, plan, secret formula or process, or from the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience;
 - b) 15 percent of the gross amount of the royalties arising from the use of, or the right to use, any copyright of cinematograph films, and films or tapes for television or radio broadcasting.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations. (Emphasis and underscoring supplied)

Based on the foregoing provision, royalties paid by a franchisee, which is a resident of the Philippines, to a resident of the Czech Republic, may be taxed at 10% in the Philippines.

In *Cargill Philippines, Inc. v. Commissioner of Internal Revenue*,⁶³ the Supreme Court held the following:

The articles for the elimination or avoidance of double taxation of both countries are found in the following provisions in the RP-US Tax Treaty and RP-Czech Tax Treaty:



⁶² CONVENTION BETWEEN THE CZECH REPUBLIC AND THE REPUBLIC OF THE PHILIPPINES FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME, signed on November 13, 2000, which took effect on January 1, 2004; Refer to Revenue Memorandum Circular No. 15-2004.

⁶³ G.R. No. 203346, September 9, 2020 [Per J. Leonen, Third Division].

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RP-US Tax Treaty	RP-Czech Tax Treaty
Article 23 RELIEF FROM DOUBLE TAXATION Double taxation of income shall be avoided in the following manner: 1. <i>In accordance with the provisions and subject to the limitations of the law of the United States (as it may be amended from time to time without changing the general principle hereof), the United States shall allow to a citizen or resident of the United States as a credit against the United States tax the appropriate amount of taxes paid or accrued to the Philippines and, in the case of a United States corporation owning at least 10 percent of the voting stock of a Philippine corporation from which it receives dividends in any taxable year, shall allow credit for the appropriate amount of taxes paid or accrued to the Philippines by the Philippine corporation paying such dividends with respect to the profits out of which such dividends are paid. Such appropriate amount shall be based upon the amount of tax paid or accrued to the Philippines, but the credit shall not exceed the limitations (for the purpose of limiting the credit to the United States tax on income from sources within the Philippines or on income from sources outside the United States) provided by United States law for the taxable year. For the purpose of applying the United States credit in</i>	Article 22 ELIMINATION OF DOUBLE TAXATION 1. In the case of a resident of the Philippines, double taxation shall be eliminated as follows: Subject to the laws of the Philippines and the limitations thereof regarding the allowance of a credit against the Philippine tax of tax paid in any country other than the Philippines, the Czech tax paid in respect of income derived from the Czech Republic shall be allowed as credit against the Philippine tax payable in respect of that income. 2. In the case of a resident of the Czech Republic, double taxation shall be eliminated as follows: a) The Czech Republic, when imposing taxes on its residents, may include in the tax base upon which such taxes are imposed the items of income which according to the provisions of this Convention may also be taxed in the Philippines, but shall allow as a deduction from the amount of tax computed on such a base an amount equal to the tax paid in the Philippines. Such deduction shall not, however, exceed that part of the Czech tax, as computed before the deduction is given, which is appropriate to the income which, in accordance with the provisions of this Convention, may be taxed in the Philippines.

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relation to taxes paid or accrued to the Philippines, the rules set forth in Article 4 (Source of Income) shall be applied to determine the source of income. For purposes of applying the United States credit in relation to taxes paid or accrued to the Philippines, the taxes referred to in paragraphs 1 (b) and 2 of Article I (Taxes Covered) shall be considered to be income taxes.

2. In accordance with the provisions and subject to the limitations of the law of the Philippines (as it may be amended from time to time without changing the general principle hereof), the Philippines shall allow to a citizen or resident of the Philippines as a credit against the Philippine tax the appropriate amount of taxes paid or accrued to the United States . . . Such appropriate amount shall be based upon the amount of tax paid or accrued to the United States, but the credit shall not exceed the limitations (for the purpose of limiting the credit to the Philippine tax on income from sources within the United States, and on income from sources outside the Philippines) provided by Philippine law for the taxable year[.] (Emphasis supplied)

b) Where in accordance with any provision of the Convention income derived by a resident of the Czech Republic is exempt from tax in the Czech Republic, the Czech Republic may nevertheless, in calculating the amount of Czech tax on the remaining income of such resident, take into account the exempted income. (Emphasis supplied)

Indeed, both the United States and the Czech Republic adopt the credit principle, where the taxes paid in the Philippines on royalty income are allowed to be credited against the United States tax or Czech tax, as the case may be. However, a closer look at the treaty provisions would show that while the RP-Czech Tax Treaty specifies how the tax credit is to be implemented and its limitations, the RP-US Tax Treaty does not.



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By looking at the RP-Czech Tax Treaty, we would already know how the credit is applied and what the maximum deduction allowed is:

First, the Czech tax is calculated based on the taxpayer's total income, including the income from the Philippines, but the tax paid in the Philippines is allowed as deduction from the Czech tax; and

Second, the tax paid in the Philippines should not exceed the Czech tax appropriate to the Philippine-sourced income.

On the other hand, while the RP-US Tax Treaty does not provide details on how the credit is to be applied and its limitations, it expressly refers to the United States law in that the tax paid or accrued to the Philippines shall be allowed as a credit against United States tax *in accordance with, and subject to the limitations of United States law*. Furthermore, *the tax credit shall not exceed the limitations provided by the United States law for the taxable year*.

Moreover, **under the RP-Czech Tax Treaty, the limitation on credit is already specified—that the Philippine tax should not exceed the Czech tax payable for the same income. Under the RP-US Tax Treaty, the limitation on credit is not determinable unless we look into the internal tax law of the United States**. (Emphasis supplied)

Based on the foregoing jurisprudential pronouncements, both the United States and the Czech Republic adopt the credit principle, where the taxes paid in the Philippines on royalty income are allowed to be credited against the United States tax or Czech tax, as the case may be.

Unlike the above jurisprudence, here petitioner was able to present evidence to prove or establish the provision of the United States law which would determine the limitation being referred to in Article 23(1) of the RP-US Treaty, to wit:⁶⁴

§901. Taxes of foreign countries and possessions of United States

(a) Allowance of credit

If the taxpayer chooses to have the benefits of this subpart, the tax imposed by this chapter shall, subject to the limitation of section 904, be credited with the amounts provided in the applicable paragraph of subsection (b) plus,

⁶⁴ Exhibits "P-67" and "P-68", Docket – Vol. III, at pp. 1884–1885, and 1899, respectively; Exhibits "P-55" and "P-56", Docket – Vol. IV, at pp. 2003–2024, respectively. 

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in the case of a corporation, the taxes deemed to have been paid under section 960. Such choice for any taxable year may be made or changed at any time before the expiration of the period prescribed for making a claim for credit of refund of the tax imposed by this chapter for such taxable year. The credit shall not be allowed against any tax treated as a tax not imposed by this chapter under section 26(b).

(b) Amount allowed

Subject to the limitation of Section 904, the following amounts shall be allowed as the credit under subsection (a):

(1) Citizens and domestic corporations

In the case of a citizen of the United States and of a domestic corporation, the amount of any income, war profits, and excess profits taxes paid or accrued during the taxable year to any foreign country or to any possession of the United States; and

§904. Limitation on credit**(a) Limitation**

The total amount of the credit taken under section 901(a) shall not exceed the same proportion of the tax against which such credit is taken which the taxpayer's taxable income from sources without the United States (but not in excess of the taxpayer's entire taxable income) bears to his entire taxable income for the same taxable year.

Thus, the RP-US Tax Treaty grants similar tax reliefs to residents of the United States with respect to taxes imposable upon royalties earned from sources within the Philippines as those allowed to Czech residents under the RP-Czech Tax Treaty.

In this case, petitioner was able to establish that it is a corporation duly organized and existing under the laws of the USA,⁶⁵ and not registered as a corporation in the Philippines,⁶⁶ and is a resident of the USA during the taxable year 2020.⁶⁷ Further, it is registered with the BIR as a non-resident foreign corporation.⁶⁸



⁶⁵ Docket – Vol. II, pp. 846–847, JSFI, Stipulation of Facts, par. 1; Exhibit “P-23”, Docket – Vol. II, pp. 1426–1440.

⁶⁶ Exhibit “P-26”, BIR Records, p. 71.

⁶⁷ Exhibit “P-24”, Docket – Vol. II, pp. 1441–1442.

⁶⁸ Exhibit “P-58”, Docket – Vol. II, p. 1478.

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Moreover, based on the *Master Franchise Agreement* dated November 12, 2019,⁶⁹ executed between petitioner,⁷⁰ as Master Franchisor, and Grantline, Inc., Bartle Beyl, Inc., Frontlake, Inc., Bardstown, Inc., and Knoxport, Inc., or the Master Franchisee, particularly in Article 15.1(2) thereof,⁷¹ Franchisees were granted the right to use the intellectual property of the KFC brand, which is defined in paragraph 57, Schedule A thereof,⁷² as follows:

- (57) Intellectual Property includes Master Franchisor name, the Brand Name, Concept, Manual, the Standards, System, System Property, Marks and all other trade names, trade marks, patents, designs, layout and colour scheme of Master Franchisor, reputation, know-how, techniques, trade secrets, product formulations, business plans, marketing plans, all marketing and promotional material developed by or on behalf of Master Franchisor, email addresses, any computer software developed by or for Master Franchisor and special systems and procedures used by Master Franchisor and special systems and procedures used by Master Franchisor, as well as Customer Information, whether in written or other forms and including copies of the Intellectual Property and the Customer Information.

From the foregoing, the use of the Intellectual Property is within the definition of “royalties” under Article 13(3) of the RP-US Tax Treaty, in relation to Article 12(2)(a) of the RP-Czech Tax Treaty.

Thus, petitioner may avail of treaty benefits under the above-quoted RP-US Tax Treaty, in relation to the RP-Czech Tax Treaty.

The subject FWT was erroneously or excessively paid and must be refunded to petitioner.

To substantiate its claim, petitioner presented the *Monthly Remittance Form of Final Income Taxes Withheld* (BIR Form No. 0619-F) filed by its Franchisees,⁷³ *Quarterly Alphalist*

⁶⁹ Exhibit “P-11”, BIR Records, pp. 72–230.

⁷⁰ The Franchisor was changed from KFC Asia Franchise Pte. Ltd. to petitioner effective January 1, 2020; Refer to Exhibit “P-12”, BIR Records, pp. 232–236.

⁷¹ Exhibit “P-11”, BIR Records, p. 102.

⁷² Exhibit “P-11”, BIR Records, p. 128.

⁷³ Exhibits “P-13” to “P-17”, Docket – Vol. II, pp. 1411–1420.



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of Payees,⁷⁴ eFPS Payment Details,⁷⁵ Bank Remittance Advices for Franchisees' remittance of net royalty to petitioner,⁷⁶ and Royalty Computation Reports from Franchisees⁷⁷ for January to April and June 2020, which were examined by the ICPA, Lucky Francis P. Felipe.

Based on the Royalty Computation Report from Franchisees, petitioner derived royalties from the sales of its Franchisees amounting to ₱3,787,161,928.69, broken down as follows:

Exhibit No.	Period	FRANCHISEES SALES SUBJECT TO ROYALTY					Total
		Bardstown, Inc.	Bartle Beryl, Inc.	Frontlake, Inc.	Grantline, Inc.	Knoxport, Inc.	
"P-47"	Jan 2020	₱217,664,442.22	₱333,266,506.18	₱127,570,595.68	₱292,966,704.86	₱242,249,070.77	₱1,213,717,319.71
"P-48"	Feb 2020	200,160,944.75	312,377,035.44	116,254,083.32	270,294,010.16	226,536,986.10	1,125,623,059.77
"P-49"	Mar 2020	113,897,644.05	173,635,395.79	76,971,998.35	158,948,496.05	138,297,241.20	661,750,775.44
"P-50"	Apr 2020	39,147,009.17	52,020,514.18	31,629,890.42	54,350,177.88	48,966,710.15	226,114,301.80
"P-51"	Jun 2020	103,496,186.80	159,033,877.94	64,545,525.76	121,961,397.50	110,919,483.97	559,956,471.97
	Total	₱674,366,226.99	₱1,030,333,329.53	₱416,972,093.53	₱898,520,786.45	₱766,969,492.19	₱3,787,161,928.69

Petitioner's Franchisees computed the royalties based on the royalty rates of six percent (6%)⁷⁸ and five percent (5%)⁷⁹ of their respective sales in accordance with the *Master Franchise Agreement*,⁸⁰ and remitted the corresponding FWTs at the rate of 30% thereon as evidenced by the BIR Form No. 0619-F.⁸¹ Consequently, the Franchisees remitted FWTs totaling ₱66,096,996.34 for the periods covering January 2020 to April 2020 and June 2020, summarized as follows:

⁷⁴ Exhibits "P-52" to "P-54", USB (Exhibit "P-46-2"); attached to Exhibits "P-15" to "P-16", Docket – Vol. II, pp. 1416 and 1418, respectively.

⁷⁵ Exhibits "P-18" to "P-22", Docket – Vol. II, pp. 1421–1425.

⁷⁶ Exhibits "27", "P-28", "P-30", "P-32", "P-35", and "P-36", BIR Records, pp. 35, 34, 28, 38, 31, and 30, respectively; Exhibit "P-31", Docket – Vol. I, p. 262; Exhibits "P-29", "P-33", "P-34", Docket – Vol. II, pp. 1445–1449.

⁷⁷ Exhibits "P-47" to "P-51", USB Exhibit (P-46-2).

⁷⁸ Item 10 of Schedule I, Exhibit "P-11", BIR Records, p. 137.

⁷⁹ Equity outlets listed in Part I of Schedule 4 (Existing Equity Outlets), wherein the terms of their current old form Franchise Agreements (5% royalty) continue to apply until their expiry in accordance with clause 2.1(5)(a) of Exhibit "P-11", BIR Records, pp. 80, and 148–155.

⁸⁰ Exhibit "P-11", BIR Records, pp. 72–230.

⁸¹ Exhibits "P-13" to "P-17", Docket – Vol. II, pp. 1411 to 1420; Exhibits "P-18" to "P-22", Docket – Vol. II, pp. 1421–1425.

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Exhibit ⁸²	Sales Subject to Royalty [A]	% [B]	Gross Royalty / Tax Base [C = A x B]	30% Withholding Tax [D = C x 30%]	Amount Withheld per Returns [E]	BIR Form No. 0619-F ⁸³	Difference [F = D - E]
Bardstown, Inc.							
"P-47" to "P-51"	P147,174,028.05	5%	P7,358,701.40	P2,207,610.42	P11,697,070.00	"P-13"	P0.00
	527,192,198.94	6%	31,631,531.94	9,489,459.58			
TOTAL	P674,366,226.99		P 38,990,233.34	P11,697,070.00			
Bartle Beyl, Inc.							
"P-47" to "P-51"	P192,092,230.69	5%	P9,604,611.53	P2,881,383.46	17,969,723.24	"P-14"	P0.00
	838,241,098.84	6%	50,294,465.93	15,088,339.78			
TOTAL	P1,030,333,329.53		P 59,899,077.46	P17,969,723.24			
Frontlake, Inc.							
"P-47" to "P-51"	P55,266,690.71	5%	P2,763,334.54	P829,000.36	7,339,697.61	"P-15"	P0.00
	361,705,402.82	6%	21,702,324.17	6,510,697.25			
TOTAL	P416,972,093.53		P 24,465,658.71	P7,339,697.61			
Grantline, Inc.							
"P-47" to "P-51"	P146,198,790.62	5%	P7,309,939.53	P2,192,981.86	15,734,777.78	"P-16"	P0.00
	752,321,995.83	6%	45,139,319.75	13,541,795.92			
TOTAL	P898,520,786.45		P52,449,259.28	P15,734,777.78			
Knoxport, Inc.							
"P-47" to "P-51"	P149,907,715.08	5%	P7,495,385.75	P2,248,615.73	13,355,727.71	"P-17"	P0.00
	617,061,777.11	6%	37,023,706.63	11,107,111.99			
TOTAL	P766,969,492.19		P44,519,092.38	P13,355,727.72			
GRAND TOTAL	P3,787,161,928.69		P220,323,321.17	P66,096,996.35	P66,096,996.34		P0.01⁸⁴

Upon verification, the Court finds that the net royalty payments due to petitioner, as reflected in the Royalty Computation Reports from the Franchisees, agree with the amounts per Bank Remittance Advices covering the payment transfer made by the Franchisees, except for the over-remittance in the amount of US\$3,510.18, as shown below:

Franchisee	Net Royalty to be paid to Petitioner in USD ⁸⁵ [A]	Proof of Remittance to Petitioner						Difference [C = A - B]
		Exhibit Reference ⁸⁶	Reference No.	Date of Remittance	Sender	Receiver	Amount transferred in US\$ [B]	
Bardstown, Inc.	521,254.45	"P-27"	TMOR07 0220004	2-Jul-20	Bardstown, Inc.	KFC Asia Holdings LLC - 7100 Corporate Drive, Plano, TX 75024, USA	408,192.39	(0.01)
		"P-28"	0066-2002383FXTT	13-Jul-20	Bardstown, Inc.		113,062.07	
Bartle Beyl, Inc.	804,861.53	"P-29"	TMOR07 0320002	2-Jul-20	Bartle Beyl, Inc.		637,400.53	(0.01)
		"P-30"	0066-2002378FXTT	13-Jul-20	Bartle Beyl, Inc.		167,461.01	
Frontlake, Inc.	331,467.07	"P-31"	0066-2002233FXTT	1-Jul-20	Frontlake, Inc.		257,439.60	(3,510.18)

⁸² USB (Exhibit "P-46-2").

⁸³ Docket - Vol. II, pp. 1411-1420; Exhibits "P-18" to "P-22", Docket - Vol. II, pp. 1421-1425.

⁸⁴ Difference due to rounding of decimals.

⁸⁵ Exhibits "P-47" to "P-51", USB (Exhibit "P-46-2").

⁸⁶ Exhibits "27", "P-28", "P-30", "P-32", "P-35", and "P-36", BIR Records, pp. 35, 34, 28, 38, 31, and 30, respectively; Exhibit "P-31", Docket - Vol. I, p. 262; Exhibits "P-29", "P-33", "P-34", Docket - Vol. II, pp. 1445-1449.

		"P-32"	0066-2002384FXTT	13-Jul-20	Frontlake, Inc.		77,537.65	
Grantline, Inc.	706,999.60	"P-33"	TMOR07 0220002	2-Jul-20	Grantline, Inc.		567,318.09	0.01
		"P-34"	0066-2002379FXTT	13-Jul-20	Grantline, Inc.		139,681.50	
Knoxport, Inc.	597,209.27	"P-35"	TMOR07 0220005	2-Jul-20	Knoxport, Inc.		469,990.03	0.01
		"P-36"	0066-2002381FXTT	13-Jul-20	Knoxport, Inc.		127,219.23	
TOTAL	\$2,961,791.92						\$2,965,302.10	\$(3,510.18) ⁸⁷

As ascertained by the ICPA, the variance is attributable to the royalty payment of Frankfort, which does not form part of the instant claim for refund.⁸⁸ Accordingly, the foregoing pieces of evidence sufficiently established that the net royalties were actually paid to petitioner and that the corresponding FWTs thereon were withheld by the Franchisees and remitted to the BIR.

Having established the actual remittance of the royalty payments due to petitioner and the corresponding FWTs to the BIR, the remaining issue is the proper tax rate applicable to the royalty payments.

As previously discussed, petitioner is entitled to the preferential FWT rate of 10% under the "most-favored-nation" clause (found in Article 12) of the RP-US Tax Treaty, in relation to the RP-Czech Tax Treaty. Thus, applying the said 10% tax rate pursuant thereto, and based on the tax returns provided by petitioner, the excessively and erroneously paid FWTs for the period January to April 2020 and June 2020 amount to ₱44,064,664.22, as determined as follows:

Franchisee	Amount of Income	FWT @ 30%	FWT @ 10%	Amount to be Refunded
Knoxport, Inc.	₱38,990,233.34	₱11,697,070.00	₱3,899,023.33	₱7,798,046.67
Grantline, Inc.	59,899,077.46	17,969,723.24	5,989,907.75	11,979,815.49
Frontlake, Inc.	24,465,658.71	7,339,697.61	2,446,565.87	4,893,131.74
Bartle Beyl, Inc.	52,449,259.28	15,734,777.78	5,244,925.93	10,489,851.85
Bardstown, Inc.	44,519,092.38	13,355,727.71	4,451,909.24	8,903,818.47
TOTAL	₱220,323,321.17	₱66,096,996.34	₱22,032,332.12	₱44,064,664.22

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⁸⁷ Difference of (0.01) due to Rounding of Decimals, as against the ICPA computation on Table No. 2, Exhibit "P-46", Docket – Vol. II, p. 1252.
⁸⁸ Par. 2(f), Results of Review of the Documents and Information Provided by Petitioner, Exhibit "P-46", Docket – Vol. II, p. 1252.

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In fine, petitioner has sufficiently proven its entitlement to the refund or issuance of tax credit certificate in the amount of ₱44,064,664.22, representing excessively and/or erroneously paid taxes on income from royalties for the covered period.

WHEREFORE, premises considered, the *Petition for Review* is **GRANTED**.

Accordingly, respondent is **ORDERED** to **REFUND** to petitioner, or **ISSUE A TAX CREDIT CERTIFICATE** in its favor, in the amount of **₱44,064,664.22**, representing its excessively and/or erroneously paid Final Withholding Taxes for January 2020 to April 2020 and June 2020.

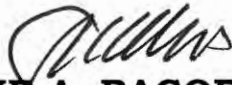
SO ORDERED.



LANEE S. CUI-DAVID

Associate Justice

I CONCUR:



JEAN MARIE A. BACORRO-VILLENA

Associate Justice

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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's Division.


JEAN MARIE A. BACORRO-VILLENA
Acting Presiding Justice

