CTA Form No. 8 (For DCC)

24-000246-0003

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CRIM. CASE NO. O-1146

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

EDUARDO P. VITERBO,
LUIS MANUEL C. BANSON JR.,
MARIO JONAS D. DE CASTRO
and GC QUALITY RESTAURANT GROUP, INC.,
Accused.

NOTICE OF RESOLUTION

To:

CITY PROSECUTOR DINDO G. VENTURANZA
DEPUTY CITY PROSECUTOR CHRISTOPHER C. GARVIDA
SR. ASSISTANT CITY PROSECUTOR JIMMY B. MORALES
Office of the City Prosecutor
16th Floor, Makati City Hall (New Building)
JP Rizal, Brgy. Poblacion
Makati City

COMMISSIONER OF INTERNAL REVENUE
Thru: Prosecution Division
Room 704, BIR National Office Building
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

ATTY. RAUL SJ. DE GUZMAN
Bureau of Internal Revenue - Revenue Region No. 8A
36th Floor, Export Bank Plaza Building
Sen. Gil Puyat Avenue, Makati City

GREETINGS:

You are hereby notified by these presents that on **June 21, 2024,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **June 21, 2024.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

EDUARDO P. VITERBO, LUIS MANUEL C. BANSON JR., MARIO JONAS D. DE CASTRO and GC QUALITY RESTAURANT GROUP, INC.,
Accused.

CTA Crim. Case No. **O-1146**

For: Violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, in relation to Sections 253(d) and 256 of the same code.

Members:

DEL ROSARIO, P.J., *Chairperson*,
BACORRO-VILLENA, *and*
CUI-DAVID, JJ.

Promulgated:
JUN 2 1 2024 9:00AM

x - x

RESOLUTION

On 16 May 2024, the plaintiff filed an Information[1] against herein accused **EDUARDO P. VITERBO**, **LUIS MANUEL C. BANSON JR., MARIO JONAS D. DE CASTRO** and **GC QUALITY RESTAURANT GROUP, INC., (accused)**, for violation of Section 255[2] of the National Internal Revenue Code (**NIRC**) of 1997, as amended, in relation to Sections 253(d)[3] and 256[4] of the same Code allegedly committed as follows:

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1 Division Docket, pp. 5-7.

2 **SEC. 255**. *Failure to File Return, Supply Correct and Accurate Information, Pay Tax Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.*

3 **SEC. 253**. *General Provisions. –*

...

(d) In the case of associations, partnerships or corporations, the penalty shall be imposed on the partner, president, general manager, branch manager, treasurer, officer-in-charge, and employees responsible for the violation.

4 **SEC. 256**. *Penal Liability of Corporations.*

> ...
>
> The undersigned Prosecutor accuses Eduardo P. Viterbo, Luis Manuel C. Banson Jr., Mario Jonas D. De Castro and GC Quality Restaurant Group Inc. of the crime of violation of NATIONAL INTERNAL REVENUE CODE sec. 255 in rel. to sec. 253(d) and 256, committed as follows:
>
> On the 15th day of February 2019, in the city of Makati, Philippines, accused, acting as chairman, treasurer and corporate secretary, respectively, of GC Quality Restaurant Group Inc., a taxpayer, having been duly commanded by the Bureau of Internal Revenue, Revenue Region No. 8A, to pay tax deficiencies in the aggregate amount of Php34,210,280.52, consisting of the following tax deficiencies:
>
> | | |
> |---|---|
> | Income Tax | 8,390,782.13 |
> | Value Added Tax | 20,715,361.03 |
> | Expanded Withholding Tax | 3,006,407.33 |
> | Documentary Stamp Tax | 2,077,730.03 |
> | Compromise Penalty | 20,000.00 |
>
> without justifiable reason, did then and there willfully, unlawfully, and feloniously fail and refuse to pay the said deficiencies despite several notices duly served and opportunities given them to do so, in violation of the above-cited law.
>
> CONTRARY TO LAW.
>
> ...

The plaintiff attached the following supporting documents to the Information:

1) Resolution dated 02 May 2024, signed by Senior Assistant City Prosecutor Jimmy B. Morales, with recommending approval of Deputy City Prosecutor Chief (2nd Division) Christopher C. Garvida, and approved by City Prosecutor Dindo G. Venturanza;[5]

2) Certified True Xerox Copy of the Minutes of Hearing dated 23 and 30 January 2024 and the four (4) Subpoenas dated 05 January 2024 issued to accused and the Bureau of Internal Revenue (BIR) as complainant;[6]

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[5] Division Docket, pp. 8-10.
[6] Id., pp. 11-16.

3) National Prosecution Service Investigation Data Form with NPS Docket No. XV-05-INV-23L-3835 dated 22 December 2023;[7]

4) Referral Letter dated 20 December 2023 of the Bureau of Internal Revenue (**BIR**) Regional Director Florante R. Aninag, addressed to Office of the City Prosecutor of Makati City;[8] and,

5) Joint Complaint-Affidavit dated 20 December 2023[9] of Revenue Officers (**ROs**) Jose III Magsombol (**Magsombol**), Tara P. Areopagita (**Areopagita**) and Angeliza Z. Olaya (**Olaya**), with attached Exhibits "A" to "BD", inclusive of sub-markings.[10]

Pursuant to Section 4[11] of Rule 9 of the Revised Rules of the Court of Tax Appeals (**RRCTA**), the Court shall proceed to determine if probable cause exists for the issuance of a warrant of arrest. In the said provision, the Court shall go over the preliminary pieces of evidence submitted by the plaintiff and accordingly attached to the Information filed against the accused. In the same provision, it is also provided that the Court may dismiss the case if the evidence fails to establish probable cause.

After a careful consideration of the records, this Court finds that the right to institute the criminal action has already prescribed.

In *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals and People of the Philippines*[12] (**Lim**), the Supreme Court ruled that the crime of failure to pay tax is committed only after receipt of the final notice and demand for payment, coupled with willful refusal to pay the taxes due within the allotted period, *viz*:

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7 Id., p. 17.

8 Id., pp. 18-19.

9 Id., pp. 20-27.

10 Id., pp. 28-111.

11 **SEC. 4.** *Warrant of arrest.* — Within ten days from the filing of the information, the Division of the Court to which the case was raffled shall evaluate the resolution of the public prosecutor and its supporting evidence. The Division may immediately dismiss the case if it finds that the evidence on record clearly fails to establish probable cause. If the Division finds probable cause, it shall issue a warrant of arrest signed by the Chairperson of the Division. In case of doubt on the existence of probable cause, the Division may order the prosecutor to present additional evidence, *ex parte*, within five days from notice.

12 G.R. Nos. L-48134-37, 18 October 1990; Emphasis and underscoring supplied.

> ...
>
> Inasmuch as the final notice and demand for payment of the deficiency taxes was served on petitioners on July 3, 1968, it was only then that the cause of action on the part of the BIR accrued. **This is so because prior to the receipt of the letter-assessment, no violation has yet been committed by the taxpayers. The offense was committed only after receipt was coupled with the willful refusal to pay the taxes due within the allot[t]ed period. The two <u>criminal informations</u>, having been filed on June 23, 1970, are well-within the five-year prescriptive period and are not time-barred.**
>
> ...

This interpretation was further applied by the Supreme Court in *Petronila C. Tupaz v. Honorable Benedicto B. Ulep Presiding Judge of RTC Quezon City, Branch 105, and the People of the Philippines*[13] (**Tupaz**), where it was held that the offense of failure to pay deficiency income tax can only be deemed committed after the taxpayer has been served a notice and demand for payment of the deficiency taxes, *viz*:

> ...
>
> We agree with the Solicitor General that the offense has not prescribed. Petitioner was charged with **failure to pay deficiency income tax** after repeated demands by the taxing authority. In *Lim, Sr. v. Court of Appeals*, we stated that[,] **by its nature[,] the violation could only be committed after service of notice and demand for payment of the deficiency taxes upon the taxpayer**. Hence, it cannot be said that the offense has been committed as early as 1980, upon filing of the income tax return. This is so because **prior to the finality of the assessment, the taxpayer has not committed any violation for nonpayment of the tax. The offense was committed only after the finality of the assessment coupled with taxpayer's willful refusal to pay the taxes within the allotted period.** ...
>
> ...

In this case, the records show that the Formal Assessment Notice (**FAN**) Part I[14] and Part II[15] with attached Details of Discrepancies[16], together with the Assessment Notices[17] (**ANs**), all dated 14 January 2019 were received by the accused on 15 January

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[13] G.R. No. 127777, 01 October 1999; Citations omitted, italics in the original text and emphasis supplied.
[14] Exhibit "I", Division Docket, pp. 50-51.
[15] Exhibit "J", id., p. 52.
[16] Exhibit "K", id., p. 53-55
[17] Exhibits "L" to "P", id., pp. 56-60.

2019.[18] The ANs indicated that the deficiency taxes should be paid on or before 14 February 2019.

Moreover, despite receipt of the FANs and ANs, accused failed to file any protest to the FAN and instead, filed a letter dated 15 August 2019[19] (reiterating its previous request for reconsideration[20] to the Preliminary Assessment Notice [**PAN**] and signifying its intent to avail and commit to the tax amnesty program). Thus, the FAN became final and unappealable on **16 February 2019** (the next business day after the deadline for filing a protest against the FLDs and ANs) and on such date the offense is "committed" for purposes of the five (5)-year prescriptive period.

Section 281 of the NIRC of 1997, as amended, which governs the prescriptive period for criminal tax actions, reads as follows:

> . . .
> **SEC. 281**. *Prescription for Violations of any Provision of this Code.* — **All violations of any provision of this Code shall prescribe after five (5) years.**
>
> **Prescription shall begin to run from the day of the commission of the violation of the law**, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.
>
> **The prescription shall be interrupted when proceedings are instituted against the guilty persons** and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy.
>
> The term of prescription shall not run when the offender is absent from the Philippines.[21]
> . . .

The above provision is clear that the period of prescription for the offense charged is five (5) years. As to the time the period of prescription starts to run, the above provision states that prescription shall begin to run from the day of the commission of the violation of the law, or if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and

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18 As indicated in the stamp receipt in the FANs, Details of Discrepancies and ANs.
19 Exhibit "R", Division Docket, pp. 62-63.
20 Exhibit "H", id., p. 49.
21 Italics in the original text and emphasis supplied.

punishment. It shall be interrupted when proceedings are instituted against the offender and shall run again if the proceedings are dismissed for reasons not constituting jeopardy. The prescriptive period shall not run when the offender is not in the country.

In construing when the prescriptive period for crimes punishable under the NIRC of 1997, as amended, is suspended, it is proper to interpret the provision with reference to its context, *i.e.*, that every part of the statute must be considered together with the other parts and kept subservient to the general intent of the whole enactment.[22] The <u>second paragraph</u> of Section 281 speaks of "judicial proceedings", which means that the "proceedings" referred to in the <u>third paragraph</u> likewise pertains to proceedings which are judicial in nature, *i.e.*, the filing of criminal information with the court.

In *Lim*, the Supreme Court interpreted Section 354 of the NIRC of 1939, as amended, (which contains the exact provision as the present Section 281 of the NIRC of 1997, as amended) to mean that tax cases are practically imprescriptible for as long as the period from the discovery *and* institution of judicial proceedings for its investigation and punishment, *up to* the filing of the information in court does not exceed five (5) years, *viz*:

> ...
>
> Not only that. **The Solicitor General stresses that Section 354 [now, Section 281] speaks not only of discovery of the fraud but also institution of judicial proceedings. Note the conjunctive word "and" between the phrases "the discovery thereof" and "the institution of judicial proceedings for its investigation and proceedings." In other words, in addition to the fact of discovery, there must be a judicial proceeding for the investigation and punishment of the tax offense before the five-year limiting period begins to run.** It was on September 1, 1969 that the offenses subject of Criminal Cases Nos. 1790 and 1791 were indorsed to the Fiscal's Office for preliminary investigation. **Inasmuch as a preliminary investigation is a proceeding for investigation and punishment of a crime, it was only on September 1, 1969 that the prescriptive period commenced.**
>
> ...
>
> The Court is inclined to adopt the view of the Solicitor General. For while that particular point might have been raised in the Ching Lak case, the Court, at that time, did not give a definitive ruling which would have settled the question once and for all. **As Section 354**

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22 *Philippine International Trading Corporation v. Commission on Audit*, G.R. No. 183517, 22 June 2010.

> **[now, Section 281] stands in the statute book (and to this day it has remained unchanged) it would indeed seem that tax cases, such as the present ones, are practically imprescriptible for as long as the period from the discovery *and* institution of judicial proceedings for its investigation and punishment, *up to* the filing of the information in court does not exceed five (5) years.**
> ...
>
> **Unless amended by the legislature, Section 354 [now, Section 281] stays in the Tax Code as it was written during the days of the Commonwealth. And as it is, must be applied regardless of its apparent one-sidedness in favor of the Government.** In criminal cases, statutes of limitations are acts of grace, a surrendering by the sovereign of its right to prosecute. They receive a strict construction in favor of the Government and limitations in such cases will not be presumed in the absence of clear legislation.[23]
> ...

Plaintiff had five (5) years from 16 February 2019 (*i.e.*, the day after the deadline for filing a protest against the FANs and ANs), or until **15 February 2024**, within which to file the Information in court. Since the subject Information was filed only on **16 May 2024**, criminal action had already *been prescribed for three (3) months and one (1) day* from **15 February 2024** (*i.e.*, the last day of the five [5]-year prescriptive period). Evidently, plaintiff's right to file the subject criminal action has already prescribed.

Relevantly, Section 2, Rule 9 of the RRCTA, as amended, provides:

> ...
> SEC. 2. *Institution of criminal actions.* — **All criminal actions before the Court in Division in the exercise of its original jurisdiction shall be instituted by the filing of an information in the name of the People of the Philippines.** In criminal actions involving violations of the National Internal Revenue Code and other laws enforced by the Bureau of Internal Revenue, the Commissioner of Internal Revenue must approve their filing. In criminal actions involving violations of the Tariff and Customs Code and other laws enforced by the Bureau of Customs, the Commissioner of Customs must approve their filing.

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23 Supra at note 12; Citation omitted, italics in the original text and emphasis supplied.

x - x

> **The institution of the criminal action shall interrupt the running of the period of prescription.**[24]
>
> ...

Verily, pursuant to the Supreme Court's pronouncement in *Lim* and the above-quoted provision of the RRCTA, the prescriptive period to file a criminal case is tolled only when the Information is filed before the Court. In this case, the Information was filed beyond the five (5)-year prescriptive period, thus there is no interruption of said period.

To be sure, criminal offenses for violations of the NIRC of 1997, as amended, including known offenses, are not intended to be imprescriptible. However, if the prescriptive period is interrupted once preliminary investigation proceedings are instituted before the DOJ, it suggests that there is no fixed deadline for filing an Information in court. As a result, the offense could indefinitely remain actionable once a complaint reaches the DOJ. This grants the DOJ discretionary power over when to act, potentially allowing the misuse of the rule on prescription as a means to intimidate, harass, and disrupt taxpayers suspected of tax violations.[25]

Stated otherwise, prescription protects taxpayers who are at the mercy of the taxing and prosecuting authorities from unreasonable, long drawn out or abusive investigations. It serves as a safeguard against the abuse of power by unscrupulous public officials, including the possibility of initiating vexatious, arbitrary, and oppressive investigations.[26]

Again, given that the Information[27] was filed on **16 May 2024**, beyond the five (5)-year prescriptive period under Section 281 of the NIRC of 1997, as amended, that ended on **15 February 2024**, plaintiff's right to initiate this case against the named accused had already expired by the time of filing. Consequently, this justifies the dismissal of the case on the ground of prescription.

Jurisprudence has it that the waiver or loss of the right to prosecute the offender is automatic and by operation of law.[28]

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24 Italics in the original text and emphasis supplied.
25 See *People of the Philippines v. Diego G. Martinez*, CTA Crim. Case No. O-672, 25 January 2024.
26 Id.
27 Supra at note 1.
28 *Rafael Yapdiangco v. The Hon. Concepcion B. Buencamino and Hon. Justiniano Cortez*, G.R. No. L-28841, 24 June 1983.

Evidently, in this case, prescription has automatically set in when plaintiff failed to file the Information within the five (5)-year prescriptive period provided under Section 281 of the NIRC of 1997, as amended.

It is also the rule that in the interpretation of the law on prescription of crimes, that which is more favorable to the accused is to be adopted.[29] Here, the circumstances show that the crime has prescribed resulting in extinguishment of accused's criminal liability, if any.

WHEREFORE, in light of the foregoing considerations, CTA Crim. Case No. O-1146 is hereby **DISMISSED** by reason of prescription of the offense charged.

SO ORDERED.

ROMAN G. DEL ROSARIO
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

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[29] *People of the Philippines v. Arturo F. Pacificador*, G.R. No. 139405, 13 March 2001.