REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

TRANSNATIONAL PLANS, INC., Petitioner,	**CTA EB NO. 2549** (CTA Case No. 9293)
	Present:
- versus -	**DEL ROSARIO, *P.J.*, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES, *JJ.***
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAR 26 2024 10:25 am

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DECISION

FERRER-FLORES, J.:

Before this Court is a Petition for Review filed on December 7, 2021 by Transnational Plans, Inc. (**TPI/petitioner**) against the Commissioner of Internal Revenue (**CIR/respondent**) appealing the *Decision* dated January 20, 2021 (**assailed Decision**)[1] and *Resolution* dated October 19, 2021 (**assailed Resolution**)[2] rendered by the Second Division of this Court.

[1] Penned by Associate Justice Jean Marie A. Bacorro-Villena and concurred in by Associate Justice Juanito C. Castañeda, Jr.; *Rollo*, pp. 86 to 146.

[2] *Rollo*, pp. 147 to 174.

The dispositive portions of the assailed Decision and assailed Resolution read as follows:

Assailed Decision

WHEREFORE, the foregoing premises considered, the instant Petition for Review filed on 14 March 2016 by petitioner Transnational Plans, Inc. is hereby **PARTIALLY GRANTED**. The deficiency value-added tax assessment shall be adjusted as a result. Accordingly, petitioner is **ORDERED TO PAY** respondent Commissioner of Internal Revenue the aggregate amount of P55,415,169.95, representing basic deficiency value-added tax, inclusive of 25% surcharge, 20% deficiency interest and 20% delinquency interest imposed thereon under Sections 248 (A) (3), 249 (B) and (C) of the NIRC of 1997, as amended, respectively, computed until 31 December 2017, as determined below:

Basic Deficiency VAT	₱13,711,241.38
25% Surcharge	3,427,810.34
Deficiency Interest (20%) from 26 January 2009 to 11 February 2016 (₱13,711,241.38 x 20% x 2,573 days/365 days)	19,330,972.09
Total Amount Due as of 11 February 2016 (*i.e.*, the date of issuance of the Final Decision)	₱36,470,023.81
Deficiency Interest (20%) from 12 February 2016 to 31 December 2017 (₱13,711,241.38 x 20% x 689 days/365 days)	5,176,463.18
Delinquency Interest (20%) from 12 February 2016 to 31 December 2017 (₱36,470,023.81 x 20% x 689 days/365 days)	13,768,682.96
Total Amount Due as of 31 December 2017	**₱55,415,169.95**

In addition, petitioner is **ORDERED TO PAY** delinquency interest at the rate of 12% computed from 01 January 2018 until full payment thereof, pursuant to Section 249 (C) of the NIRC of 1997, as amended by Republic Act No. 10963, also known as Tax Reform for Acceleration and Inclusion **(TRAIN)** and as implemented by RR 21-2018, on said deficiency value-added tax based on the principal amount of ₱36,470,023.81.

SO ORDERED.

Assailed Resolution

WHEREFORE, in light of the foregoing considerations, petitioner's Motion for Reconsideration [Re: Decision dated January 20, 2021] is hereby **DENIED** for lack of merit.

SO ORDERED.

THE PARTIES

Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines with principal office at 2nd Floor, Mary Bachrach Bldg., cor. 25th & Railroad Streets, Port Area, Manila.

Respondent, on the other hand, is the duly appointed CIR with authority, among others, to collect all internal revenue taxes and to decide disputed assessments and refunds of internal revenue taxes, fees or other charges in relation thereto, with office address at the Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City.[3]

THE ANTECEDENT FACTS

As found by the Court in Division, the facts are as follows:[4]

FACTS OF THE CASE

Petitioner received Letter of Authority **(LOA)** No. 20080033713 dated 01 July 2009 from the Large Taxpayers Audit and Investigation Division I **(LTAID I)** of the BIR, authorizing the examination of petitioner's books of accounts and other accounting records for all internal revenue taxes for TY 2008.

During the course of the audit investigation, petitioner, through its Chief Finance Officer **(CFO)**, Socorro Z. Niro **(Niro)**, successively executed six (6) Waivers of the Defense of Prescription under the Statute of Limitations of the NIRC, the details of which are as follows:

Waiver	Date of Execution	Extension of Period to Assess	Date Accepted by the BIR
1st Waiver	24 February 2011	30 September 2011	25 February 2011
2nd Waiver	06 September 2011	30 June 2012	11 September 2011
3rd Waiver	16 May 2012	31 December 2012	22 May 2012
4th Waiver	16 November 2012	30 June 2013	27 November 2012
5th Waiver	22 April 2013	31 December 2013	07 May 2013
6th Waiver	15 November 2013	30 June 2014	20 November 2013

Prior to the execution of the 5th and 6th waivers or on 12 April 2013, respondent issued a Notice of Informal Conference **(NIC)** which petitioner received on 08 May 2013. In response thereto, petitioner submitted a letter dated 29 May 2013 explaining the alleged discrepancy of figures in relation to the tax audit.

On 30 January 2014, petitioner received a copy of the Preliminary Assessment Notice **(PAN)** dated 28 January 2014, with attached Details of Discrepancies for deficiency VAT for TY 2008 in the total amount of ₱27,422,799.21.

On 13 February 2014, petitioner filed a Reply contesting the preliminary findings contained in the PAN.

Thereafter, on 14 March 2014, petitioner received a copy of the Formal Letter of Demand **(FLD)** dated 12 March 2014, with attached Details of Discrepancies and Audit Result/Assessment Notice. This was signed by then Officer-In-Charge Assistant Commissioner for Large

[3] *Parties, Petition For Review, Rollo*, p. 3.
[4] *Facts, Decision* dated January 20, 2021, *Rollo*, pp. 87 to 90; citations omitted.

Taxpayers Service, Alfredo V. Misajon **(OIC-ACIR Misajon)**. In the FLD, respondent ordered petitioner to pay a total amount of ₱27,864,416.70 as deficiency VAT for TY 2008.

On 10 April 2014, petitioner filed its Protest against the FLD, requesting for reconsideration of the assessment.

On 24 September 2014, petitioner received a copy of the FDDA dated 22 September 2014 with attached Details of Discrepancies and Audit Result/Assessment Notice. This was signed by then OIC-ACIR Nestor S. Valeroso **(Valeroso)**. In the FDDA, petitioner's alleged deficiency VAT was increased to ₱29,009,628.15, computed as follows:

Premiums subjected to VAT *per* VAT return	₱39,383,577.08
Add: Other Income/Adjustments	113,835,016.33
Total Sales subject to VAT	153,218,593.41
VAT due thereon at 12%	18,386,231.21
Less: Input VAT	459,220.76
VAT Payable	17,927,010.45
Less: VAT Paid *per* VAT return	4,266,808.49
Deficiency VAT	13,660,201.96
Add: Interest (computed up to 31 August 2014)	15,299,426.19
Compromise Penalty	50,000.00
Deficiency VAT, inclusive of interest and penalty	₱29,009,628.15

The FDDA included details of the discrepancies, as follows:

Other Income/Adjustments		
Undeclared Premium		
Gross receipts *per* audit	₱141,730,991.00	
Less: Premiums subjected to VAT *per* VAT return	39,383,577.08	₱102,347,413.92
Other Income		5,062,538.00
Commission Income		1,167,909.00
Processing Fee		594,516.00
Surcharges and Lapsed Plan		2,884,424.00
Miscellaneous Fee		1,750,715.00
Undeclared Purchases		3,489.98
Undeclared Sales		24,010.43
Total amount still subject to VAT		₱113,835,016.33

On 24 October 2014, petitioner filed an administrative appeal, through a Request for Reconsideration of the FDDA, addressed to Commissioner Kim S. Jacinto-Henares **(Commissioner Henares)**.

On 11 February 2016, petitioner received a copy of the Final Decision, which was signed by then Commissioner Henares, denying its administrative appeal. The said Final Decision likewise indicated that the aggregate amount of deficiency VAT for TY 2008 is ₱29,009,628.15, inclusive of interest and penalty.

PROCEEDINGS BEFORE THE FIRST DIVISION

On 14 March 2016, petitioner filed the instant Petition for Review, praying for the setting aside and/or cancellation of the alleged deficiency VAT assessment of ₱29,009,628.15 as stated in the Final Decision dated 11 February 2016 and the FDDA dated 22 September 2014, for being devoid of factual or legal basis.

Later or on 07 June 2016, respondent filed her Answer, interposing the following special and affirmative defenses and We quote:

xxx xxx xxx

This Court issued a Notice of Pre-Trial Conference on 13 June 2016 and set the same on 08 September 2016. Accordingly, the parties filed their respective Pre-Trial Briefs.

During the pre-trial held on 24 November 2016, the Court granted both parties fifteen (15) days within which to file their Joint Stipulation of Facts and Issues **(JSFI)**. The parties submitted their JSFI on 09 December 2016. Then, on 19 January 2017, the Court issued a Pre-Trial Order which, upon petitioner's motion and without respondent's comment, the Court later amended on 27 October 2017.

Meanwhile, petitioner filed a Motion to Commission an Independent Certified Public Accountant and moved for the commissioning of KPMG, represented by any of its partners, as Independent Certified Public Accountant **(ICPA)**. However, having failed to finalize and reach an agreement with KPMG, petitioner subsequently moved for the commissioning of R.P. Mora & Co., represented by Atty. Rheiner P. Mora **(Mora)**, in lieu of KPMG. Finding merit in petitioner's motion to commission an ICPA, the Court granted the same and Atty. Mora thereafter took his oath and signed his Oath of Commission.

Trial then ensued where petitioner presented the testimony of its witnesses, namely: **(1)** Atty. Karla Grace J. Deles **(Deles)**, petitioner's Corporate Secretary; **(2)** Marivic M. Anciado **(Anciado)**, petitioner's Chief Accountant; **(3)** Atty. Mora, the Court-commissioned ICPA; and, **(4)** Ma. Veronica S. Lao Guico **(Lao Guico)**, petitioner's President and General Manager.

In her Judicial Affidavit, Deles stated that she is petitioner's Corporate Secretary and that she was asked to verify, based on the corporate records in her custody, whether petitioner's Board of Directors adopted resolutions for the execution of the waivers with respect to the 2008 tax examination of petitioner's books. According to her, she did not find any record referring to such resolution. Neither was there any Secretary's Certificate attesting to such resolution.

On the witness stand, Anciado identified her Judicial Affidavit where she declared essentially that: **(1)** as Chief Accountant, she prepares petitioner's books of accounts and financial statements and is involved in the review, processing, initial approval and filing of tax returns, in the payment of taxes, as well as in the review of BIR assessments and audits; **(2)** petitioner received an FLD dated 12 March 2014 from the BIR which stated its VAT deficiency amounting to ₱27,864,416.70; **(3)** the BIR issued an FDDA dated 22 September 2014 stating that petitioner's VAT deficiency for TY 2008 already amounted to ₱29,009,628.15; **(4)** the BIR issued a Final Decision dated 11 February 2016 which reiterated petitioner's VAT deficiency in the amount of ₱29,009,628.15 as stated in the FDDA; and, **(5)** the deficiency VAT assessment, as stated in the 11 February 2016 Final Decision and 22 September 2014 FDDA, is erroneous and should be declared void for the following reasons: **(a)** the trust fund contributions, not being income or fees, should not have been included in the computation of gross receipts and subjected to VAT; **(b)** premium collections from seafarers who are non-residents should not have been subjected to VAT; **(c)** the "Related Parties Account" should not have been included in the computation of total collections; and, **(d)** "Other Income" was already reflected in the VAT returns.

As for ICPA Mora, he identified his Judicial Affidavit and ICPA Report dated 18 August 2017 showing the results of his examination of petitioner's documents. *Per* his independent examination and as stated in his ICPA Report, he found that: **(1)** based on the official receipts **(ORs)** issued by petitioner, the total amount of collections is higher than the total amount of collections recorded in its Cash Receipts Journal by ₱952,519.52; **(2)** petitioner deposited a total amount of ₱109,927,716.55 to its Trust Fund Accounts (*i.e.*, Bank of the Philippine Islands, Metropolitan Bank and Trust Company and ING Bank N.V. Philippines), all of which were taken from its collections from planholders; **(3)** petitioner's withdrawals from the Trust Fund Accounts in the total amount of ₱40,536,187.18 were exclusively used for pre-terminated and matured plans during TY 2008; and, **(4)** petitioner's output VAT payable for TY 2008 should only be ₱3,867,432.35, but petitioner's output VAT paid *per* VAT returns is ₱4,726,029.25 (resulting in an output VAT overpayment of ₱858,596.90).

As for Lao Guico, she identified her Judicial Affidavit where she declared essentially that: **(1)** as President and General Manager, her responsibilities include the review of documents and reports such as tax returns, assessments, audits and correspondences with the BIR; **(2)** the BIR requested petitioner to execute a total of six (6) Waivers of the Defense of Prescription to extend the three-year prescriptive period allowed for it to assess any deficiency taxes against petitioner for TY 2008; **(3)** all waivers were executed and signed by petitioner's CFO, Niro, despite the absence of a board resolution authorizing her to sign such waivers; **(4)** considering that the FDDA was merely signed by OIC-ACIR Valeroso, petitioner opted to file on 24 October 2014 an administrative appeal before the BIR requesting for reconsideration of the FDDA; **(5)** respondent denied petitioner's administrative appeal in the Final Decision dated 11 February 2016 which was signed by then Commissioner Henares; **(6)** the deficiency VAT assessment, as stated in the 11 February 2016 Final Decision, is void since the BIR Examiner took more than 120 days to complete his audit of petitioner's 2008 books of account in violation of Revenue Memorandum Order (RMO) No. 19-2009; and, at the time the FLD was issued, more than three (3) years have already elapsed from the filing of the 2008 VAT returns and thus the period to assess already prescribed as the waivers did not validly extend the three-year prescriptive period.

Subsequently, on 17 April 2018, petitioner filed its Formal Offer of Evidence **(FOE)**, consisting of Exhibits "P-1" to "P-55-B", inclusive of sub-markings. Respondent failed to file his comment *per* Records Verification dated 23 May 2018.

In the Resolution dated 29 August 2018, the Court admitted petitioner's exhibits except for: **(1)** Exhibits "P-18", "P-19", "P-20", "P-21", "P-22", "P-23", "P-24" and "P-48 series", for failure to identify; **(2)** Exhibits "P-31", "P-31-A" and "P-31-B", for failure to present the originals for comparison; and, **(3)** Exhibits "P-43-1199", "P-43-1898", "P-43-3366", "P-49-705", "P-49-708", "P-49-709", "P-49-712", "P-49-713", "P-49-75", "P-49-718", "P-49-721", "P-49-722", "P-49-725", "P-49-726", "P-49-728", "P-49-730", "P-49-733", "P-49-736", "P-49-737", "P-49-740", "P-49-743", "P-49-746", "P-49-749", "P-49-757", "P-49-769", "P-49-774", "P-49-775", "P-49-778", "P-49-779", "P-49-782", "P-49-783", "P-49-785", "P-49-788", "P-49-791", "P-49-792", "P-49-795", "P-49-796", "P-49-798", "P-49-799", "P-49-803", "P-49-805", "P-49-808", "P-49-809", "P-49-811", "P-49-812", "P-49-813", "P-49-817", "P-49-820", "P-49-823", "P-49-826", "P-49-829" to "P-49-831", "P-49-834" to "P-49-843", "P-49-847", "P-49-848", "P-49-850" to "P-49-852", "P-49-858", "P-49-862" to "P-49-888", "P-49-891" to "P-49-893", "P-49-896", "P-49-899", "P-49-902", "P-49-903", "P-49-905", "P-49-908", "P-49-909", "P-49-912", "P-49-913", "P-49-916", "P-49-919", "P-49-922", "P-49-923", "P-49-926", "P-49-932", "P-49-933", "P-49-935", "P-49-937", "P-49-940" to "P-49-943", "P-49-946", "P-49-949", "P-49-950", "P-49-953", "P-49-954", "P-49-956", "P-49-958", "P-49-961", "P-49-964", "P-49-967", "P-49-970", "P-49-973", "P-49-976", "P-49-977", "P-49-979", "P-49-981", "P-49-984", "P-49-987", "P-49-989", "P-49-990" to "P-49-994", "P-49-996" to "P-49-999", "P-49-1001", "P-49-1002", "P-49-1004" to "P-49-1007", "P-49-1010" to "P-49-1012", "P-49-1014" to "P-49-1016", "P-49-1018", "P-49-1019", "P-49-1021", "P-49-1022", "P-49-1024", "P-49-1025", "P-49-1027", "P-49-1028", "P-49-1030" to "P-49-1036", "P-49-1038" to "P-49-1041", "P-49-1043" to "P-49-1045", "P-49-1047", "P-49-1048", "P-49-1050", "P-49-1052" to "P-49-1054", "P-49-1056", "P-49-1057", "P-49-1059", "P-49-1060", "P-49-1062" to "P-49-1064", "P-49-1066" to "P-49-1069", "P-49-1071" to "P-49-1074", "P-49-1076", "P-49-1077", "P-49-1079" to "P-49-1081", "P-49-1083", "P-49-1085" to "P-49-1090", "P-49-1092", "P-49-1095" to "P-49-1097", "P-49-1099" to "P-49-1101", "P-49-1103" to "P-49-1105", "P-49-1107", "P-49-1109", "P-49-1110", "P-49-1112", "P-49-1113", "P-49-1115", "P-49-1116", "P-49-1118", "P-49-1119", "P-49-1121" to "P-49-1124", "P-49-1126" to "P-49-1128", "P-49-1130" to "P-49-1132", "P-49-1134" to "P-49-1136", "P-49-1140", "P-49-1141", "P-49-1143", "P-49-1145", "P-49-1147", "P-49-1150" to "P-49-1152", "P-49-1156", "P-49-1158", "P-49-1159", "P-49-1163", "P-49-1164", "P-49-1166" to "P-49-1168", "P-49-1170", "P-49-1171", "P-49-1173" to "P-49-1175", "P-49-1177" to "P-49-1179", "P-49-1181", "P-49-1182", "P-49-1184", "P-49-1185", "P-49-1187" to "P-49-1189", "P-49-1192" to "P-49-1196", "P-49-1198" to "P-49-1201", "P-49-1203" to "P-49-1206", "P-49-1208", "P-49-1209", "P-49-1211" to "P-49-1213", "P-49-1215" to "P-49-1218", "P-49-1220", "P-49-1221", "P-49-1223" to "P-49-1226", "P-49-1228" to "P-49-1230", "P-49-1232", "P-49-1233", "P-49-1235" to "P-49-1240", "P-49-1243", "P-49-1244", "P-49-1246", "P-49-1247", "P-49-1251" to "P-49-1257", "P-49-1259" to "P-49-1263", "P-49-1265" to "P-49-1268", "P-49-1270", "P-49-1272" to "P-49-1274", "P-49-1276", "P-49-1277", "P-49-1279" to "P-49-1283", "P-49-1285", "P-49-1287", "P-49-1288", "P-49-1292" to "P-49-1294", "P-49-

1296" to "P-49-1301", "P-49-1303" to "P-49-1306", "P-49-1308" to "P-49-1311", "P-49-1313" to "P-49-1316", "P-49-1335" to "P-49-1385", "P-49-1388", "P-49-1401" to "P-49-1437", "P-49-1454" to "P-49-1499", "P-49-1513" to "P-49-1548", "P-49-1564" to "P-49-1613" and "P-49-1620" to "P-49-1634", for not being found in the records of the case.

In the same Resolution, the First Division directed Court-commissioned ICPA Mora to submit a soft copy of the ICPA Report and the corresponding annexes within five (5) days from receipt thereof.

On 18 September 2018, petitioner filed an Omnibus Motion, praying, among others, for the First Division to reconsider the denial of the foregoing exhibits and that the same be admitted as part of the evidence for petitioner.

In the meantime, the Court issued an Order dated 26 September 2018, transferring the instant case to the Second Division.

PROCEEDINGS BEFORE THE SECOND DIVISION

On 17 October 2018, petitioner filed another Omnibus Motion, praying for the Second Division to: **(1)** direct the ICPA to submit the soft copy of the ICPA Report and the exhibits and documents referenced therein, including the denied exhibits; **(2)** grant the ICPA a period of thirty (30) days from 18 October 2018 within which to submit the said soft copy; and, **(3)** allow the ICPA to view and copy the ICPA Report and the exhibits and documents previously submitted to the Court.

Per Records Verification dated 20 December 2018, respondent failed to file a comment on petitioner's Omnibus Motions. The Court then granted petitioner's 17 October 2018 Omnibus Motion before resolving the admissibility of petitioner's previously denied exhibits.

On 25 March 2019, petitioner filed a Manifestation/Motion, asking the Second Division to issue a *subpoena duces tecum* against ICPA Mora for him to submit the soft copy of his ICPA Report, including the annexes, and the soft copies of the denied exhibits (which were included in his report). In the Resolution dated 08 April 2019, the Court granted petitioner's Manifestation/Motion, ordering ICPA Mora to appear before the Court and submit the soft copy of his ICPA Report, including annexes, and the soft copies of the denied exhibits during the hearing set on 08 May 2019.

During the 08 May 2019 Hearing, ICPA Mora appeared before the Court and submitted two (2) USBs marked as Exhibits "P-50-A" and "P-50-B". Respondent was given a period of five (5) days or until 13 May 2019 to file his additional comment on petitioner's FOE which he was only able to file on 14 May 2019.

In the Resolution dated 19 July 2019, the Court admitted some of petitioner's exhibits, particularly those that the ICPA were submitted but still denied the following: **(1)** Exhibits "P-18", "P-19", "P-20", "P-21", "P-22", "P-23", "P-24" and "P-48 series", for not being specifically identified by the ICPA; **(2)** Exhibits "P-31", "P-31-A" and "P-31-B", for failure to present the originals for comparison; and, **(3)** Exhibits "P-49-705", "P-49-798", "P-49-878", "P-49-991", "P-49-1015", "P-49-1016", "P-49-1050", "P-49-1107", "P-49-1270", "P-49-1287", "P-49-1288", and "P-49-1583", for not being found in the records.

At the hearing held on 22 July 2019, respondent presented his lone witness, Revenue Officer Olivia Sison **(RO Sison)**, who testified on direct examination by way of her Judicial Affidavit. RO Sison holds the position of RO III. In line with her duty and pursuant to the LOA dated 01 July 2009, she conducted an investigation of petitioner's books of accounts for all internal revenue taxes for TY 2008. She recommended the issuance of the PAN, the FLD, the FDDA and that the assessments contained in the FDDA be reinstated in the Final Decision.

During cross-examination, RO Sison testified that: **(1)** petitioner requested for the execution of the waivers; **(2)** a Secretary's Certificate was attached to the submission of the waivers; and, **(3)** petitioner's CFO, Niro, executed all the waivers.

On 29 July 2019, respondent filed his FOE, consisting of Exhibits "R-1" to "R-19", inclusive of sub-markings. On the other hand, petitioner filed on 05 August 2019, a Tender of Excluded Evidence and later, on 19 August 2019, a Comment and/or Opposition to respondent's FOE.

In the Resolution dated 10 October 2019, the Second Division admitted all of respondent's evidence and noted petitioner's Tender of Excluded Evidence. In the same Resolution, the Second Division directed both parties to file their respective memoranda within thirty (30) days from receipt hereof.

Petitioner filed its Memorandum on 16 December 2019; while respondent filed his Memorandum on 15 January 2020. In the Resolution dated 22 January 2020, the case was submitted for decision.

On January 20, 2021, the Court in Division rendered the assailed Decision partially granting the *Petition for Review.*[5]

Aggrieved, TPI filed its *Motion for Reconsideration [Re: Decision dated January 20, 2021]* on February 10, 2021,[6] *sans* comment of the CIR.[7]

On July 19, 2021, the Court in Division promulgated the assailed Resolution, denying TPI's motion for reconsideration for lack of merit.[8]

Hence, the instant Petition for Review.

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[5] *Supra* note 1.
[6] Docket – Vol. III., pp. 1427 to 1463.
[7] Records Verification dated March 15, 2021 issued by the Judicial Records Division of this Court, Docket – Vol. III, p. 1466.
[8] *Supra* note 2.

THE PROCEEDINGS BEFORE THE COURT *EN BANC*

On December 7, 2021, TPI filed the instant *Petition for Review*, assailing the Second Division's Decision dated January 20, 2021, and Resolution dated October 19, 2021.

In its Resolution dated March 16, 2022, the Court ordered the CIR to file his comment thereon and required TPI to submit proof of receipt of the assailed Resolution.

On March 25, 2022, TPI filed a *Manifestation* attaching thereto a copy of the assailed Resolution with a copy of the envelope which bears the receiving stamp of TPI's counsel showing the date of receipt of the registered mail to be November 22, 2021.[9] Subsequently, through another *Manifestation,* TPI submitted a Certification from the Pasig City Central Post Office showing that the assailed Resolution was received on November 22, 2021.[10]

Thereafter, in the Resolution dated May 16, 2022, the Court noted TPI's Manifestations filed on March 25 and 28, 2022, and the CIR's failure to file his comment. In the same resolution, the Court directed the parties to proceed to the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA) for mediation.[11] The parties, however, failed to reach an agreement, despite the extensions[12] granted by the Court for the continuation of the mediation proceedings.

On January 26, 2023, this Court submitted the case for decision.[13]

THE ISSUES

In the Petition for Review, the following assignment of errors were raised:

A. The Second Division erred when it declared that the assessments against petitioner are valid;
B. The Second Division erred when it declared that the period to assess petitioner has not prescribed;

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[9] *Rollo*, pp. 481 to 482.
[10] *Rollo*, pp. 515 to 516.
[11] *Rollo*, pp. 65 to 66.
[12] Resolution dated October 4, 2022, *Rollo*, pp. 541 to 542; Resolution dated November 28, 2022, *Rollo*, pp. 549 to 550.
[13] *Rollo* – Vol. III, pp. 1382 to 1384.

C. The Second Division erred when it declared that the trust fund contributions should be subjected to value-added tax (VAT);
D. The Second Division erred when it declared that the premium collections from non-residents should be subjected to twelve percent (12%) VAT;
E. The Second Division erred when it declared that the related parties account should be included in the computation of the collection;
F. The Second Division erred when it declared that other income was included in VAT returns;
G. The Second Division did not rule upon or discuss the issue of whether there is a tax leak against the government in this case; and,
H. The Second Division erred when it declared that the computation of delinquency interest is valid.

THE ARGUMENTS

A. Assessments are not valid.

TPI argues that the assessments are not valid for lack of legal and factual basis. TPI posits that its right to due process was violated as the tax assessment did not provide a definite, set and fixed tax liability. The amounts of supposed tax liabilities in the *Formal Letter of Demand with* (FLD) and the *Final Decision on Disputed Assessment* (FDDA) remain indefinite since the tax dues were still subject to modification. Further, there was no demand to pay but only a mere request for TPI to pay. In addition, CIR's assessment of deficiency VAT on TPI's Other Income is allegedly void for lacking basis and substantiation. TPI likewise avers that the BIR examiner took more than 120 days to complete her tax audit. Moreover, the FLD is a complete and verbatim copy of the *Preliminary Assessment Notice* (PAN) which unmistakably shows the CIR's utter disregard of TPI's substantiation in its Reply.

For the foregoing reasons, the assessments should be nullified.

B. CIR's period to assess has prescribed.

TPI claims that the waiver of the statute of limitations it executed was invalid and, thus, did not toll the running of the prescriptive period. TPI alleges that the *First Waiver* was notarized and accepted after expiration of the CIR's period to assess the same. Consequently, such waiver can no longer extend an expired period. Moreover, there was allegedly no Board Resolution authorizing the signatory to sign the waivers in favor of TPI nor was the revenue officer who accepted the waivers authorized to do so. TPI also avers that certain waivers were invalid for the following reasons: (1) waiver was unsigned by the CIR or by his authorized representatives, and, thus, were never accepted; and (2) waiver was incompletely or improperly notarized.

TPI also insists that the case of *Commissioner of Internal Revenue v. Next Mobile, Inc. (formerly Nextel Communications Phils., Inc.)*[14] does not apply to its case, as the ruling therein is based on the peculiarities of the case and, thus, a mere exception to the long-standing doctrine that a non-compliant waiver is invalid and ineffective to toll the running of the prescriptive period. Instead, the ruling of the Supreme Court in *Commissioner of Internal Revenue vs. Kudos Metal Corporation*[15] should apply.

C. Trust fund contributions are not subject to VAT.

TPI posits that the *Trust Fund Contribution* should have been excluded from its gross receipts subject to VAT as the same could not possibly have been given as remuneration or payment nor is it a source of income for TPI. TPI argues that the CIR's reliance on Revenue Regulation No. 74-2007 is misplaced as the Pre-Need Code provides that trust fund shall be excluded from the gross receipts of a pre-need company. TPI claims that the law should prevail over a Revenue Regulation, in case of conflict, invoking the cases of *CIR vs. Central Luzon Drug Corporation*[16] and *CIR vs. Bicolandia Drug Corporation.*[17] TPI further argues that trust funds or amounts received in trust and earmarked for some other person are not part of the gross receipts. Lastly, the BIR itself issued a ruling in favor of TPI, specifically, BIR Ruling No. DA-027-2006 dated January 31, 2006, where the CIR acknowledged that trust fund contributions are excluded from gross receipts and should not be subjected to VAT. TPI should not be faulted for relying in good faith on the said ruling. As such, TPI properly excluded the trust fund contributions for VAT purposes.

D. Premium collections from non-residents are not subject to twelve percent (12%) VAT.

TPI avers that its main clients are seamen and seafarers who received compensation for services rendered abroad as members of the complement of vessels engaged exclusively in international trade. Furthermore, if premiums paid by seamen and seafarers are to be subjected to VAT, the same should still be at the rate of zero percent (0%) and not twelve percent (12%), pursuant to Section 108(B)(2) of the National Internal Revenue Code (NIRC) of 1997, as amended. TPI disagrees with the finding in the assailed Decision that it failed to adduce evidence that the premium collections are from non-resident seamen or seafarers. TPI believes that its witnesses adequately testified on the

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[14] G.R. No. 212825, December 7, 2015.
[15] G.R. No. 178087, May 5, 2010.
[16] G.R. No. 159647, April 15, 2005.
[17] G.R. No. 148083, July 21, 2006.

fact that collections were made from its non-resident clients as well as referred to and identified documents in support of its position.

E. Related parties account should be excluded from the computation of its collections.

TPI argues that the collections derived from its "Accounts Receivable - Related Parties" should not be subject to VAT. TPI invokes the case of *Waterfront Philippines vs. CIR*,[18] where the CTA held that the determining factor to consider whether the advances to affiliates are subject to tax is if lending activity is included in the primary purpose of the business. TPI posits that it is not a lending investor and that lending activity is not part of its primary purpose; thus, advances to affiliates reflected in its "Accounts Receivable - Related Parties" are not part of the business of the TPI as a pre-need company. Accordingly, TPI concludes that the subject collections are not subject to VAT; hence, collections from its related parties should not have been included in the computation of TPI's collection.

F. VAT assessment on its other income is not valid.

TPI insists that the CIR merely enumerated its Other Income/ Adjustments without specifying the nature of the items subjected to VAT. Clearly, the assessment thereon was arbitrary and consequently void.

Moreover, assuming without admitting that the amount of *Other Income/Adjustments* was correct, TPI claims that the said amount was already declared in its VAT returns since the *Other Income* per TPI's VAT returns amounting to ₱16,476,526.08 already covers and even exceeds the *Other Income/Adjustments* per tax assessment notices amounting to ₱11,487,602.41.

G. There is no tax leak against the government.

Assuming without admitting that there was a failure to comply with the invoicing requirements as stated in the assailed Decision, TPI only failed to comply with procedural requirements but the taxes thereon was paid by TPI although not properly presented in the receipts. Consequently, no loss of taxes received could be attributed to the government.

I. Delinquency interest is not valid.

TPI claims that, considering there is neither a correctly assessed deficiency tax nor an unpaid amount attributable to TPI, delinquency interest could not be imposed thereon. Furthermore, FDDA did not mention a

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[18] C.T.A. Case No. 8024, November 13, 2012.

computation or assessment of delinquency interest. As such, the sudden imposition of said interest opens TPI to a new assessment of sorts which it did not have the opportunity to contest.

THE RULING OF THE COURT *EN BANC*

The Petition for Review is meritorious.

The instant Petition for Review was timely filed.

Section 3(b) of Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA) provides:

> "Sec. 3. Who may appeal; period to file petition. — xxx xxx xxx
>
> (b) **A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution**. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review." *(Emphasis supplied)*

Based on the foregoing, the CIR had fifteen (15) days from receipt of the assailed Resolution within which to file his Petition for Review.

Records show that, on November 22, 2021, TPI received the assailed Resolution of the Court in Division.[19] The CIR, thus, had fifteen (15) days from such receipt, or until **December 7, 2021**, to file his Petition for Review. As such, the instant petition was timely filed on **December 7, 2021**.

That having been settled, the Court shall now proceed to the issues raised by TPI.

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[19] *Notice of Resolution, Rollo*, p. 484; *Certification* issued by the Pasig City Central Post Office on March 24, 2022, *Rollo*, p. 518.

TPI's right to due process was violated; hence, subject FLD and assessment notices are void for failure to comply with the due process requirements under existing rules and regulations.

TPI claims that the Court in Division erred when it declared the assessment as valid. TPI posits that the assessment is void for being violative of its right to due process for the following reasons:

(1) TPI was not properly informed in writing of the law and the facts upon which the assessment was made;
(2) There was no clear explanation as to where the alleged *Other Income* arose;
(3) The FLD is a complete and verbatim copy of the PAN;
(4) The amounts of tax liabilities under the FLD and the FDDA were still subject to amendment and, thus, were indefinite; and,
(5) The FLD contained only a mere request for payment and not a demand to pay.

Due process requirements in relation to tax assessments are enshrined in Section 228 of the NIRC of 1997, as amended, to wit:

> **SECTION 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: xxx
>
> xxx xxx xxx
>
> The taxpayers shall be **informed in writing of the law and the facts on which the assessment is made**; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the

> decision shall become final, executory and demandable. xxx *(Emphasis supplied)*

In relation thereto, Section 3 of Revenue Regulations (RR) No. 12-1999, dated September 6, 1999,[20] which implements the above provision, states that the assessment notices must show in detail, the facts and the law, rules and regulations, or jurisprudence on which the assessment is based on. We quote:

> SECTION 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment. —
>
> 3.1 Mode of procedures in the issuance of a deficiency tax assessment:
>
> 3.1.1 *Notice for informal conference.* — The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for deficiency tax or taxes. If the taxpayer is not amenable, based on the said Officer's submitted report of investigation, **the taxpayer shall be informed, in writing**, by the Revenue District Office or by the Special Investigation Division, as the case may be (in the case Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National Office) of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, **for the purpose of "Informal Conference," in order to afford the taxpayer with an opportunity to present his side of the case**. If the taxpayer fails to respond within fifteen (15) days from date of receipt of the notice for informal conference, he shall be considered in default, in which case, the Revenue District Officer or the Chief of the Special Investigation Division of the Revenue Regional Office, or the Chief of Division in the National Office, as the case may be, shall endorse the case with the least possible delay to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative, as the case may be, for appropriate review and issuance of a deficiency tax assessment, if warranted.
>
> xxx xxx xxx
>
> 3.1.2 *Preliminary Assessment Notice (PAN).* — If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, **a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based** (see illustration in ANNEX A hereof). If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall

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[20] Please note that, at the time of issuance of the PAN on January 30, 2014, RR No. 18-2013 was already effective. The said RR amended RR No. 12-1999 effectively removing the requirement of a Notice for Informal Conference. It was published on November 28, 2013 and December 3, 2013 and effective after fifteen (15) days following publication in any newspaper of general circulation.

be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

xxx xxx xxx

3.1.4 *Formal Letter of Demand and Assessment Notice.* — The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. **The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, *otherwise, the formal letter of demand and assessment notice shall be void*** (see illustration in ANNEX B hereof). The same shall be sent to the taxpayer only by registered mail or by personal delivery. If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof. xxx *(Emphasis supplied)*

From the foregoing, it is evident that, in tax assessments, the taxpayer must be informed and afforded opportunity to refute the findings of the BIR. The notice to the taxpayer must detail the facts and the law, rules and regulations, or jurisprudence on which the assessment is based.

An examination of the PAN reveals that the factual and legal basis of the assessment was stated therein. As found by the Court in Division, the factual basis of the amounts in the PAN, although not explained in detail, can be traced to TPI's own Audited Financial Statements (AFS) for 2008, we quote:[21]

The records show that petitioner was sufficiently apprised of the legal and factual bases of the deficiency VAT assessment issued against it in substantial compliance with Section 228 of the NIRC of 1997, as amended.

Even as the Details of Discrepancies attached to the PAN, FLD and FDDA did not contain a detailed explanation on the amount of premiums still subject to VAT and respondent failed to address each of petitioner's arguments (in its Reply to the PAN and Protest against the FLD), petitioner still could not claim that it had no way of knowing what items did respondent consider in arriving at the deficiency VAT assessment. As shown in the records, those items and the corresponding amounts thereof were lifted from petitioner's own 2008 Audited Financial Statements (AFS).

In arriving at the amount of premiums still subject to VAT (*i.e.*, ₱113,835,016.33, as indicated in Schedule 1 of the Details of Discrepancies), the BIR determined the "should be" amount of VATable sales by obtaining the net movement of "Accounts Receivable" (Trade,

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[21] *Decision* dated January 20, 2021; Docket – Vol. III, pp. 1403 to 1404.

> Others and Related Parties Accounts) and adding thereto the amount of income from premiums and the aggregate amount of "Other Income" (the components of which can be found in the notes to the 2008 AFS, except for the ₱3,489.98 undeclared purchases and the ₱24,010.43 undeclared sales).
>
> With respect to petitioner's claim that respondent did not provide an explanation on why there existed "Other Income" in the amount of ₱5,062,538.00, the Court could not subscribe to petitioner's posturing as such amount was reflected in the notes to the 2008 AFS and vaguely described as "Other Income."
>
> It is noteworthy that respondent would not have known what comprised "Other Income" since even the notes to the 2008 AFS is silent as to the nature thereof. If anything, it is petitioner that could explain the existence and nature of "Other Income" (which respondent included under "Other Income/Adjustments" in determining the "should be" amount of VATable sales).

As to the legal basis, the PAN indicated Section 249(B) of the NIRC, as amended, and Revenue Memorandum Order (RMO) No. 19-2007 as the bases for imposition of interest and compromise penalty, respectively. Moreover, Annex A thereof contained the Details of Discrepancies where the BIR indicated Sections 106, 107, and 108 of the NIRC and RMC No. 74-2007 as the basis for the imposition of VAT.

Clearly, the BIR did not fall short in apprising TPI of the factual and legal basis of the assessment insofar as the PAN is concerned.

The issue lies with the validity of the FLD.

To recall, when TPI received the PAN on January 30, 2014,[22] it had fifteen (15) days therefrom, or until February 14, 2014, to file a response or reply thereon. On February 14, 2014, TPI timely filed its *Reply to PAN*,[23] as evidenced by the "Received" stamp of the BIR's Large Taxpayers Service. Thereafter, on March 14, 2014, or 28 days from the filing of its *Reply to PAN*, TPI received the FLD dated March 12, 2014.[24] TPI alleged that its right to due process was violated as the contents of the FLD merely restated the entire PAN and did not take into consideration the issues raised and substantiations it provided.

Pertinent thereto is the case of *CIR vs. Avon Products Manufacturing, Inc.* (***Avon*** case),[25] where the Supreme Court held that the purpose of the due

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[22] Exhibit "R-12", BIR Records, Folder I, pp. 1178 to 1181.
[23] Exhibit "P-5", Docket – Vol. III, pp. 982 to 986.
[24] Exhibit "P-8", Docket – Vol. III, pp. 992 to 996.
[25] G.R. Nos. 201398-99 & 201418-19, October 3, 2018.

process requirements is not served when the BIR failed to act on or consider the taxpayer's explanations, to wit:

> The facts demonstrate that Avon was deprived of due process. It was not fully apprised of the legal and factual bases of the assessments issued against it. The Details of Discrepancy attached to the Preliminary Assessment Notice, as well as the Formal Letter of Demand with the Final Assessment Notices, **did not even comment or address the defenses and documents submitted by Avon. Thus, Avon was left unaware on how the Commissioner or her authorized representatives appreciated the explanations or defenses raised in connection with the assessments. There was clear inaction of the Commissioner at every stage of the proceedings.**
>
> First, despite Avon's submission of its Reply, together with supporting documents, to the revenue examiners' initial audit findings, and its explanation during the informal conference, the Preliminary Assessment Notice was issued. The Preliminary Assessment Notice reiterated the same audit findings, except for the alleged under-declared sales which ballooned in amount from ₱15,700,000.00 to ₱62,900,000.00, **without any discussion or explanation on the merits of Avon's explanations.**
>
> Upon receipt of the Preliminary Assessment Notice, Avon submitted its protest letter and supporting documents, and even met with revenue examiners to explain. Nonetheless, the Bureau of Internal Revenue issued the Final Letter of Demand and Final Assessment Notices, merely reiterating the assessments in the Preliminary Assessment Notice. There was no comment whatsoever on the matters raised by Avon, or discussion of the Bureau of Internal Revenue's findings in a manner that Avon may know the various issues involved and the reasons for the assessments.
>
> Under the Bureau of Internal Revenue's own procedures, the taxpayer is required to respond to the Notice of Informal Conference and to the Preliminary Assessment Notice within 15 days from receipt. **Despite Avon's timely submission of a Reply to the Notice of Informal Conference and protest to the Preliminary Assessment Notice**, together with supporting documents, **the Commissioner and her agents violated their own procedures by refusing to answer or even acknowledge the submitted Reply and protest.**
>
> The Notice of Informal Conference and the Preliminary Assessment Notice are a part of due process. They give both the taxpayer and the Commissioner the opportunity to settle the case at the earliest possible time without the need for the issuance of a Final Assessment Notice. **However, this purpose is not served in this case because of the Bureau of Internal Revenue's inaction or failure to consider Avon's explanations.**
>
> Upon receipt of the Final Assessment Notices, Avon resubmitted its protest and submitted additional documents required by the revenue examiners, including the original General Ledger for 1999. As testified by Avon's Finance Director, Mildred C. Emlano, the Bureau of Internal Revenue examiners were convinced with Avon's explanation during the meeting on August 4, 2003, particularly, that there was no underdeclaration of sales. Still, the Commissioner merely issued a Collection Letter dated July 9, 2004, demanding from Avon the payment of the same deficiency tax

> assessments with a warning that should it fail to do so within the required period, summary administrative remedies would be instituted without further notice. This Collection Letter was based on the May 27, 2004 Memorandum of the Revenue Officers stating that "[Avon] failed to submit supporting documents within 60-day period." **This inaction on the part of the Bureau of Internal Revenue and its agents could hardly be considered substantial compliance of what is mandated by Section 228 of the Tax Code and the Revenue Regulations No. 12-99.**
>
> **It is true that the Commissioner is not obliged to accept the taxpayer's explanations, as explained by the Court of Tax Appeals. However, when he or she rejects these explanations, he or she must give some reason for doing so.** He or she must give the particular facts upon which his or her conclusions are based, and those facts must appear in the record. *(Emphasis supplied)*

The Supreme Court also emphasized in the *Avon* case that, while the CIR is not obliged to accept the taxpayer's explanations, he/she must nonetheless state the reasons when he/she rejects the same. Moreover, the CIR must give the particular facts upon which the CIR's conclusions are based, and those facts must appear in the record. Otherwise, it may not be considered substantial compliance of what is mandated by Section 228 of the NIRC of 1997, as amended, and RR No. 12-1999.

In the instant case, a comparison of the PAN and FLD and their respective Details of Discrepancies would show that the FLD is substantially a reiteration of the PAN, despite the timely filing of the *Reply to PAN* by TPI. Below is the comparative matrix of the PAN and FLD:

PAN dated January 28, 2014[26]			*FLD dated March 12, 2014*[27]		
xxx xxx xxx			xxx xxx xxx		
Please be informed that after investigation, there has been found deficiency on Value Added Tax, for the year **2008**, as shown hereunder:			Please be informed that after investigation, there has been found deficiency Value Added Tax, for the year **2008**, as shown hereunder:		
Deficiency on Value Added Tax:			**Value Added Tax VT-116-LOA-00033713-8-14-338**		
Collection		₱141,730,991.00	Collection		₱141,730,991.00
Add: Other Income /Adjustments			Add: Other Income /Adjustments		
Other Income	₱ 5,062,538.00		Other Income	₱ 5,062,538.00	
Commission income	1,167,909.00		Commission income	1,167,909.00	
Processing fee	594,516.00		Processing fee	594,516.00	
Surcharges and lapsed plan	2,884,424.00		Surcharges and lapsed plan	2,884,424.00	
Miscellaneous fee	1,750,715.00		Miscellaneous fee	1,750,715.00	
Undeclared purchases (SLP vs. AITEID VS MAP)	3,489.98		Undeclared purchases (SLP vs. AITEID VS MAP)	3,489.98	
Undeclared sales (SLS vs. AITEID VS SAWT)	24,010.43	11,487,602.41	Undeclared sales (SLS vs. AITEID VS SAWT)	24,010.43	11,487,602.41
Total Vatable Sale		₱153,218,593.41	Total Vatable Sale		₱153,218,593.41
Rate		0.12	Rate		0.12
OUTPUT TAX PER AUDIT		18,386,231.21	OUTPUT TAX PER AUDIT		₱ 18,386,231.21
Less: input		459,220.76	Less: input		459,220.76
VAT Payable		₱ 17,927,010.45	VAT Payable		₱ 17,927,010.45
Less: VAT Payment		4,266,808.49	Less: VAT Payment		4,266,808.49

[26] *Supra*, note 22.
[27] *Supra*, note 24.

PAN dated January 28, 2014[26]

VAT still due			13,660,201.96
Add:	Interest (computed up to 1.31.14)	₱ 13,712,597.25	
	Compromise Penalty	50,000.00	13,762,597.25
Amount still due			₱ 27,422,799.21

Please take note that the interest will have to be adjusted if paid beyond the dated [sic] specified therein.

The complete details covering the aforementioned discrepancies established during the investigation of this case are shown in the accompanying "ANNEX – A" of this letter.

The twenty percent (20%) interest per annum has been imposed pursuant to Section 249(B) of the same Tax Code due to your failure to pay tax within the time prescribed by law for its payment.

The compromise penalty has been imposed pursuant to Revenue Memorandum Order No. 19-2007.

xxx xxx xxx

FLD dated March 12, 2014[27]

VAT still due			13,660,201.96
Add:	Interest (computed up to 3.31.14)	₱ 14,154,214.74	
	Compromise Penalty	50,000.00	14,204,214.74
Amount still due			₱ 27,864,416.70

Please take note that the interest will have to be adjusted if paid beyond the date specified therein.

The complete details covering the aforementioned discrepancies established during the investigation of this case are shown in the accompanying ANNEX – A of this letter.

The twenty percent (20%) interest per annum has been imposed pursuant to Section 249(B) of the same Tax Code due to your failure to pay tax within the time prescribed by law for its payment.

The compromise penalty has been imposed in view of your failure to file and/or pay an internal revenue tax at the time or times required by law or regulation pursuant to Section 255 of the NIRC, as amended, as determined using the schedule of suggested compromise penalties prescribed under Revenue Memorandum Order (RMO) No. 19-2007.

xxx xxx xxx

DETAILS OF DISCREPANCIES

VALUE-ADDED TAX

Sales subject to VAT (P113,835,016.33) – Verification disclosed that part of your sales had not been subjected to VAT, as per analysis hereunder, in violation of the provision of Section 106, 107 and 108 of the NIRC, as amended and RMC No. 74-07.

Sch. 1

Account Receivable, beginning		
Trade	7,474,910.00	
Others	1,495,818.00	
Related Parties	59,255,896.00	
Total Accounts Receivable, beg		68,226,624.00
Add: Revenue per ITR		132,204,768.00
Total		200,431,392.00
Less: Accounts Receivable, end		
Trade	7,942,049.00	
Others	13,966,048.00	
Related Parties	36,792,304.00	
Total Accounts Receivable, beg[28]		58,700,401.00
Collection		141,730,991.00
Add: Other Income /Adjustments		
Other Income	5,062,538.00	
Commission income	1,167,909.00	
Processing fee	594,516.00	
Surcharges and lapsed plan	2,884,424.00	
Miscellaneous fee	1,750,715.00	
Undeclared purchases (SLP vs. AITEID VS MAP)	3,489.98	
Undeclared sales (SLS vs. AITEID VS SAWT)	24,010.43	11,487,602.41
Total Vatable Sale		153,218,593.41
Less: Premiums subject to VAT per VAT returns		39,383,577.08
Premiums still subject to VAT		113,835,016.33

xxx xxx xxx

DETAILS OF DISCREPANCIES

VALUE-ADDED TAX

Sales subject to VAT (P113,835,016.33) – Verification disclosed that part of your sales had not been subjected to VAT, as per analysis hereunder, in violation of the provision of Section 106, 107 and 108 of the NIRC, as amended and RMC No. 74-07.

Sch. 1

Account Receivable, beginning		
Trade	7,474,910.00	
Others	1,495,818.00	
Related Parties	59,255,896.00	
Total Accounts Receivable, beg		68,226,624.00
Add: Revenue per ITR		132,204,768.00
Total		200,431,392.00
Less: Accounts Receivable, end		
Trade	7,942,049.00	
Others	13,966,048.00	
Related Parties	36,792,304.00	
Total Accounts Receivable, beg[29]		58,700,401.00
Collection		141,730,991.00
Add: Other Income /Adjustments		
Other Income	5,062,538.00	
Commission income	1,167,909.00	
Processing fee	594,516.00	
Surcharges and lapsed plan	2,884,424.00	
Miscellaneous fee	1,750,715.00	
Undeclared purchases (SLP vs. AITEID VS MAP)	3,489.98	
Undeclared sales (SLS vs. AITEID VS SAWT)	24,010.43	11,487,602.41
Total Vatable Sale		153,218,593.41
Less: Premiums subject to VAT per VAT returns		39,383,577.08
Premiums still subject to VAT		113,835,016.33

xxx xxx xxx

[28] *Sic.*
[29] *Sic.*

From the foregoing, it is evident that the FLD is substantially a replica of the PAN, except for the adjustment to the deficiency interest computation. It can also be observed that there was no mention or acknowledgment of the *Reply to PAN* and the issues raised by TPI therein. The Court notes that, in the *Memorandum*[30] dated February 24, 2014 prepared by Revenue Officer Olivia Sison (RO Sison), wherein she recommended the issuance of an FLD, RO Sison alleged that TPI failed to comply within the prescribed time stated in the PAN, *viz.:*

> A Notice for Informal Conference (NIC) and Preliminary Assessment Notice (PAN) was served to the above-named taxpayer on May 8, 2013 and January 30, 2014, respectively. **The taxpayer failed to comply with the prescribed time stated in PAN hence a Formal Letter of Demand (FLD) will be issued**. The discrepancies noted in PAN were reiterated, to wit:
>
> **VALUE ADDED TAX (VAT)**
>
> a. Verification of the SLP and third party information (Relief) shows that there's a discrepancy on purchases amounting to ₱3,489.98;
> b. Per verification of sales as against the Third party information shows a discrepancy on sales amounting to ₱24,010.431
> c. Per verification of revenue per Financial Statement (FS) against the declaration of revenue per VAT return shows that there's a difference of ₱113,807,515.92. **According to the said taxpayer, the trust fund contribution should not be *[sic]* form part of computation of VAT per SEC. Pursuant to RMC No. 74-2007, pre-need should declared *[sic]* the VAT based on gross receipts;**
> d. The said findings resulted to a total deficiency tax on VAT amounting to ₱27,864,416.70 including increments.
>
> xxx xxx xxx *(Emphasis supplied)*

It is not clear in the above *Memorandum* what RO Sison meant when she concluded that TPI failed to comply with the prescribed time stated in the PAN. On the other hand, the Court notes that TPI was able to timely file its *Reply to PAN* where it raised several and substantial issues to refute the BIR's findings. More importantly, although the *Memorandum* contains a reference to an issue raised by TPI, the same cannot be considered as notice to TPI of the reason/s for the rejection of its arguments as it is an internal document not accessible to TPI.

[30] Exhibit "R-13", BIR Records, Folder 1, pp. 1197 to 1198.

Furthermore, the CIR claims that, assuming without admitting that the FLD is an exact duplicate of the PAN, this is because petitioner's *Reply to PAN* did not have any meritorious grounds for the respondent to deviate from his deficiency assessment.[31] On this particular issue, the Court in Division ruled in this wise:

> Also, as respondent aptly explained, the computation of deficiency VAT indicated in the FLD is exactly the same as that in the PAN because petitioner failed to raise meritorious arguments in its Reply to the PAN. Likewise, in its Protest against the FLD, petitioner substantially reiterated its arguments in its Reply to the PAN which, as mentioned, respondent found to be unmeritorious.
>
> In *Sony Philippines, Inc. v. Commissioner of Internal Revenue* **(Sony)**, this Court held that the requirement of stating the law and the facts upon which the assessment is made is deemed complied with when petitioner was able to refute the revenue examiner's findings, thus:
>
> xxx xxx xxx
>
>> The fact that petitioner knew (and even admitted) of the previous factual and legal bases appearing in the Assessment Notice and Formal Letter of Demand is sufficient compliance with Section 228. Whatever other reasons raised (or might be raised) during the trial will be considered as a defense in support of the deficiency assessment.
>>
>> It bears stressing that the purpose of **Section 228 of the National Internal Revenue Code of 1997** in requiring that "(t)he taxpayer be informed of the law and facts on which assessment is made" is **to give the taxpayer the opportunity to refute the findings of the examiner and give a more accurate and detailed explanation regarding the assessment(s)**. The purpose of the said law having been served in the instant case, Section 228 of the National Internal Revenue Code of 1977 is deemed to have been complied with. Therefore, the assessment is not null and void.
>
> xxx xxx xxx
>
> Considering the foregoing circumstances, particularly that petitioner was able to refute the examiner's findings and give a more detailed explanation regarding the assessment and that it ought to know the existence and nature of "Other Income," We see no reason to depart from the aforementioned ruling. The assailed deficiency VAT assessment substantially complied with the requirement of Section 228 of the NIRC of 1997, as amended; hence, the same is valid and binding upon petitioner. *(Citations omitted)*

[31] *Par. 25.3* of CIR's *Answer*, Docket – Vol. 1, pp. 234-250.

We are not convinced.

While it may be true that the FLD could be an exact duplicate of the PAN if the taxpayer failed to refute the BIR's findings on meritorious grounds, the factual and legal basis for this conclusion must still be properly communicated to the taxpayer. As aforestated, TPI raised substantial issues in refutation of the PAN, but which the CIR failed to address. To reiterate, the Supreme Court, in the *Avon* case, held that the CIR must give the <u>particular facts upon which the CIR's conclusions are based, and those facts must appear in the record</u>. Such particularity is lacking in the instant case.

Moreover, this Court cannot subscribe to the conclusion in the assailed Decision that, since TPI was given an opportunity to refute the examiner's findings, there was then substantial compliance with the requirement of Section 228 of the NIRC of 1997, as amended, as held in the case of *Sony Philippines, Inc. vs. Commissioner of Internal Revenue*.[32] On the contrary, the fact that respondent was able to file its *Reply to PAN* and *Protest to FLD* is of no moment as it does not change the fact that the CIR violated TPI's right to due process. In *Commissioner of Internal Revenue vs. Yumex Philippines Corporation*,[33] the Supreme Court, citing *Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue*,[34] held as follows:

> In *<u>Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue</u>*, the BIR ignored RR No. 12-99 and did not issue to the taxpayer, Pilipinas Shell Petroleum Corporation *(PSPC)*, **a notice for informal conference and a PAN as required**; and as a result, deprived PSPC of due process in contesting the formal assessment levied against it. The Court pronounced therein that "**[w]hile PSPC indeed protested the formal assessment, such does not denigrate the fact that it was deprived of statutory and procedural due process to contest the assessment before it was issued.**" The Court once more reminded the BIR to be more circumspect in the exercise of its functions as the power of taxation is also sometimes called the power to destroy and, therefore, should be exercised with caution to minimize injury to the proprietary rights of the taxpayer. *(Emphasis supplied; citations omitted)*

In fine, TPI was left unaware as to how the BIR appreciated the arguments and legal bases laid down in its *Reply to PAN* and the reasons for rejecting the same. Without addressing the arguments/explanations raised by TPI in its *Reply to PAN*, even for the purpose of rejecting the same, the BIR indeed fell short of the requirement of due process under Section 228 of the NIRC of 1997. It bears to emphasize that the requirement that the taxpayer must be informed of the factual and legal bases of the assessment is mandatory. **The factual and legal bases of the assessment cannot be**

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[32] C.T.A. Case No. 6185, October 26, 2004.
[33] G.R. No. 222476, May 5, 2021.
[34] G.R. No. 172598, December 21, 2007.

presumed. The requirement set by law to state in writing the factual and legal bases for the assessment is not a hollow exhortation. The law imposes a substantive, not merely a formal, requirement.[35]

It is worth noting that, in the following cases, the Court *En Banc* and the Court in Division have consistently applied the ruling in the *Avon* case in nullifying assessments where the FLD was a verbatim reiteration of the PAN without the BIR addressing the arguments/explanations of the taxpayer in its reply/protest to PAN:

1. *Commissioner of Internal Revenue vs. Bac-Man Geothermal, Inc.*, C.T.A. EB Case No. 2621 (C.T.A. Case No. 9728), October 11, 2023;

2. *Dizon Farms Produce, Inc. vs. Commissioner of Internal Revenue*, C.T.A. EB Case Nos. 2516 & 2521 (C.T.A. Case No. 9711), August 1, 2023;

3. *Commissioner of Internal Revenue vs. Fluor Daniel, Inc.*, C.T.A. EB Case No. 2567 (C.T.A. Case No. 9267), June 1, 2023;

4. *Commissioner of Internal Revenue vs. Titanium Corp.*, C.T.A. EB Case No. 2502 (C.T.A. Case No. 9644), February 13, 2023;

5. *Will Team PH, Inc. vs. Commissioner of Internal Revenue*, C.T.A. Case No. 10154, October 5, 2023; and,

6. *Bac-Man Geothermal, Inc. vs. Commissioner of Internal Revenue* C.T.A. Case No. 9728, November 18, 2021.

Considering the violation of TPI's right to due process provided under Section 228 of the NIRC of 1997, as amended, and RR No. 12-1999, this Court finds that the FLD as well as the subsequent issuances of the CIR to TPI, including the FDDA dated September 22, 2014, are all considered void.

In light of the foregoing discussions, the Court will no longer belabor discussing the other issues raised in the instant Petition.

WHEREFORE, premises considered, the *Petition for Review* is **GRANTED**. The assailed *Decision* dated January 20, 2021 and assailed *Resolution* dated October 19, 2021 rendered by the Second Division of this Court in CTA Case No. 9293 are **REVERSED** and **SET ASIDE**.

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[35] *Commissioner of Internal Revenue vs. Unioil Corp.*, G.R. No. 204405, August 4, 2021.

Accordingly, the assessment against petitioner Transnational Plans, Inc. for the alleged deficiency value-added tax (VAT) and interest thereon for taxable year 2008, is **CANCELLED** and **WITHDRAWN**.

Consequently, respondent Commissioner of Internal Revenue, his representatives, agents or any person acting on his behalf are hereby **ENJOINED** from enforcing the collection of deficiency VAT assessed against petitioner Transnational Plans, Inc. arising from *Formal Letter of Demand* dated March 12, 2014 and Audit Result/Assessment Notice No. VT-116-LOA-00033713-8-14-338 and *Final Decision on Disputed Assessment* dated September 22, 2014.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

With due respect, I join the D.O. of Justice Villena.
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

With due respect, please see Dissenting Opinion.
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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

LANEE S. CUI-DAVID
Associate Justice

HENRY S. ANGELES
Associate Justice

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.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

TRANSNATIONAL PLANS, INC., Petitioner,	**CTA EB NO. 2549** (CTA Case No. 9293)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAR 26 2024 10:25 am

x - x

DISSENTING OPINION

BACORRO-VILLENA, J.:

With all due respect to the *ponencia* of our esteemed colleague, Associate Justice Corazon G. Ferrer-Flores, I maintain my position that the subject deficiency value-added tax (**VAT**) assessment is valid as petitioner Transnational Plans, Inc. (**petitioner/TPI**) was accorded due process with respondent Commissioner of Internal Revenue's (**respondent**'s/**CIR**'s) issuance of the Formal Letter of Demand (**FLD**) dated 12 March 2014[1], with attached Details of Discrepancies and Audit Result/Assessment Notice.

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[1] Exhibit "P-8", Division Docket, Volume III, pp. 992-996 Exhibit "R-14", BIR Records, Folder 1, pp. 1200-1204.

As shown in the *ponencia*, while it declares the Preliminary Assessment Notice[2] (**PAN**) to be valid, it takes issue on the supposed defect of the FLD[3] that resulted in the violation of petitioner's right to due process. Particularly, that the FLD is substantially a reiteration of the PAN despite the filing of petitioner's Reply to the PAN.[4]

For the reasons outlined below, I respectfully present an alternative perspective on two (2) key points —

(1) There is substantial compliance with the due process requirements under Section 228[5] of the National Internal Revenue Code (**NIRC**) of 1997, as amended; and,

(2) The *ponencia*'s invocation of the case of *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*[6] (**Avon**), where an assessment was invalidated due to the violation of the taxpayer's right to due process, cannot be applied as an exception to the substantial compliance rule in the present case, given the differing factual circumstances, as will be explained later.

As to my first point, contrary to the *ponencia* and as explained in the Second Division's Decision dated 20 January 2021[7] (**Assailed Decision**) and Resolution dated 19 October 2021[8] (**Assailed Resolution**), petitioner was sufficiently apprised of the legal and factual bases of the deficiency VAT assessment issued against it in substantial compliance with Section 228 of the NIRC of 1997, as amended, which requires that the taxpayers should be informed of the legal and factual bases of the assessment.

It is propitious to point out that the assessment notices need *not* be a full narration of the facts and laws on which the assessment is based. It is enough that petitioner be *substantially* informed of the law and the facts on which the assessment for a tax liability is made in any other written document presented to the taxpayer. Thus, so long as the parties are notified and given

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2 Exhibit "P-6"/Exhibit "R-12", BIR Records, Folder 1, pp. 1178-1181.
3 Exhibit "P-8"/Exhibit "R-14", supra at note 1.
4 Exhibit "P-7", Division Docket, Volume III, pp. 987-991.
5 **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 taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void. (Emphasis supplied)
6 G.R. Nos. 201398-99, 03 October 2018.
7 *Rollo*, pp. 86-146.
8 Id., pp. 147-174.

the opportunity to explain their side, the requirements of due process are satisfactorily complied with.[9]

In *Commissioner of Internal Revenue v. Asalus Corporation*[10] (**Asalus**), citing *Samar-I Electric Cooperative v. Commission on Elections*[11], the Supreme Court itself ruled that it sufficed that the taxpayer was substantially informed of the legal and factual bases of the assessment enabling it to file an effective protest, to wit:

> ...
>
> Although the FAN and demand letter issued to petitioner were not accompanied by a written explanation of the legal and factual bases of the deficiency taxes assessed against the petitioner, the records showed that respondent in its letter dated April 10, 2003 responded to petitioner's October 14, 2002 letter-protest, explaining at length the factual and legal bases of the deficiency tax assessments and denying the protest.
>
> **Considering the foregoing exchange of correspondence and documents between the parties, we find that the requirement of Section 228 was substantially complied with.** Respondent had fully informed petitioner *in writing* of the factual and legal bases of the deficiency taxes assessment, which enabled the latter to file an "effective" protest, much unlike the taxpayer's situation in *Enron*. Petitioner's right to due process was thus not violated.[12]
>
> ...

In this case, a perusal of the Notice of Informal Conference[13] (**NIC**), the PAN, the FLD[14] and the Final Decision on Disputed Assessment (**FDDA**)[15], as well as the respective attached Details of Discrepancy, shows that the said documents contained the facts and law upon which the deficiency tax assessments were based. The fact that petitioner was able to intelligently protest the PAN (through its Reply dated 13 February 2014[16]) and the FLD (through its Protest dated 10 April 2014[17]) is a plain indication that it was informed of the facts and law upon which the assessment was based.

Notably, the basic deficiency VAT computation is consistent across all of respondent's above-mentioned issuances, as shown below:

9 *Southern Negros Development Corporation v. The Commissioner of Internal Revenue*. CTA EB No. 162 (CTA Case No. 7075), 08 August 2006.
10 G.R. No. 221590, 22 February 2017.
11 G.R. No. 193100, 10 December 2014.
12 Emphasis supplied and italics in the original text.
13 Exhibit "P-4", Division Docket, Volume III, pp. 976-981; Exhibit "R-9", BIR Records, Folder 1, pp. 1029-1036.
14 Exhibit "P-8"/Exhibit "R-14", supra at note 1.
15 Exhibit "P-10"/Exhibit "R-16", BIR Records, Folder 1, pp. 1478-1483.
16 Exhibit "P-7", supra at note 4, p. 990.
17 Exhibit "P-9", id., pp. 997-1013.

Computation	NIC[18]	PAN[19]	FLD[20]	FDDA[21]
Premiums subject to VAT *per* VAT return				₱39,383,577.08
Undeclared premiums				102,347,413.92
Collection	**₱141,730,991.00**[22]	**₱141,730,991.00**[23]	**₱141,730,991.00**[24]	**₱141,730,991.00**
Add: Other Income/Adjustments				
Other income	₱5,062,538.00	₱5,062,538.00	₱5,062,538.00	₱5,062,538.00
Commission income	1,167,909.00	1,167,909.00	1,167,909.00	1,167,909.00
Processing fee	594,516.00	594,516.00	594,516.00	594,516.00
Surcharges and lapsed plan	2,884,424.00	2,884,424.00	2,884,424.00	2,884,424.00
Miscellaneous fee	1,750,715.00	1,750,715.00	1,750,715.00	1,750,715.00
Undeclared purchases (SLP vs. AITEID v. MAP)	3,489.98	3,489.98	3,489.98	3,489.98
Undeclared sales (SLS vs. AITEID v. SAWT)	24,010.43	24,010.43	24,010.43	24,010.43
Subtotal	₱11,487,602.41	₱11,487,602.41	₱11,487,602.41	₱11,487,602.41
Total VATable Sale	**₱153,218,593.41**	**₱153,218,593.41**	**₱153,218,593.41**	**₱153,218,593.41**
Rate	12%	12%	12%	12%
Output VAT *Per* Audit	**₱18,386,231.21**	**₱18,386,231.21**	**₱18,386,231.21**	**₱18,386,231.21**
Less: Input VAT	459,220.76	459,220.76	459,220.76	459,220.76
VAT Payable	**₱17,927,010.45**	**₱17,927,010.45**	**₱17,927,010.45**	**₱17,927,010.45**
Less: VAT Payment	4,266,808.49	4,266,808.49	4,266,808.49	4,266,808.49
Basic Deficiency VAT	**₱13,660,201.96**	**₱13,660,201.96**	**₱13,660,201.96**	**₱13,660,201.96**

As to the requirement that the taxpayers shall be informed in writing of the facts on which the assessment is made, the foregoing table computation of the basic deficiency VAT evidently shows the "facts" on which the assessment is based, not only with respect to the PAN but also with respect

18 Exhibit "P-4"/Exhibit "R-9", supra at note 13, p. 977.
19 Exhibit "P-6"/Exhibit "R-12", supra at note 2, p. 1181.
20 Exhibit "P-8"/Exhibit "R-14", supra at note 1, p. 992.
21 Exhibit "P-10"/Exhibit "R-16", supra at note 15, p. 1483.
22

Account Receivable, beginning		
Trade	₱7,474,910.00	
Others	1,495,818.00	
Related Parties	59,255,896.00	
Total Accounts Receivable, beg.		₱₱68,226,624.00.00
Add: Revenue *per* ITR		132,204,768.00
Total		₱132,204,768.00
Less: Account Receivable, end		
Trade	₱7,942,049.00	
Others	13,966,048.00	
Related Parties	36,792,304.00	
Total Accounts Receivable, beg.		₱58,700,401.00
Collection		**₱73,504,367.00**

23 Id.
24 Id.

to the FLD, since *both issuances contains a detailed breakdown of the VATable transactions not declared in the 2008 VAT returns.*[25]

As the records so clearly yield, respondent treated as 'income subject to VAT' the amount of ₱102,347,413.92 labelled as 'undeclared premiums' and the items enumerated under "Other Income/Adjustments" in the table computation above.

With respect to the 'undeclared premiums', respondent calculated it by determining the difference between the total VATable sales declared *per* VAT returns of ₱39,383,577.08 and the total collections for the period of ₱141,730,991.00[26], which, in turn, is derived using the formula: Collections equals Accounts Receivable, at the beginning of the period, plus Sales for the period, less Accounts Receivable, at the end of the period. Effectively, respondent extrapolated the total collections for the period from the logic that the change in the accounts receivable balance over the period (ending balance minus beginning balance) reflects the net impact of credit sales (which increase accounts receivable) and collections on those sales (which decrease accounts receivable).

Regarding the "Other Income/Adjustments", the components thereof were lifted from petitioner's 2008 Audited Financial Statements (**AFS**)[27], except for the ₱3,489.98 undeclared purchases and the ₱24,010.43 undeclared sales (both of which were even undisputed since such amounts were used in arriving at the "Total Income subject to VAT" *per* petitioner's recomputation, as reflected in its Reply to the PAN[28]). Understandably, based on the nature of such components (*i.e.*, other income, commission income, processing fee, surcharges and lapsed plan, miscellaneous fee, undeclared purchases, and undeclared sales), respondent treated the same as income subject to VAT.

Indisputably from the table computation above, respondent has substantially informed petitioner of the "facts" on which the subject assessment for deficiency VAT is made. Petitioner cannot feign ignorance on how respondent arrived at the deficiency assessment as the computation is fairly straightforward.

As to the requirement that taxpayers shall be informed in writing of the "law" on which the assessment is made, all of respondent's above-mentioned

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[25] Exhibits "P-25" to "P-28", Division Docket, Volume III, pp. 1054-1061.
[26] Supra at note 22.
[27] See Note 16 (Interest and Other Income), Exhibit "P-29", id., pp. 1062-1132.
[28] Exhibit "P-7", supra at note 4, p. 990.

issuances (including the FLD in question)[29] state that "part of [petitioner's] sales had not been subjected to VAT ... in violation of the provision[s] of Section[s] 106[30], 107[31] and 108[32] of the NIRC [of 1997], as amended[,] and [Revenue Memorandum Circular (**RMC**)] No. 74-07[33]." This statement should suffice as legal bases for the subject deficiency VAT assessment.

Moreover, in challenging the subject deficiency VAT assessment, petitioner essentially argues, in its Reply to the PAN[34], that (1) the actual trust fund contributions were not considered and (2) the Bureau of Internal Revenue (**BIR**) included in its computation the Related Parties account and considered the changes in the said account as part of petitioner's Trade Receivables. Subsequently, in its Protest to the FLD[35], petitioner reiterated its aforesaid arguments and contended further that (3) premium collections from non-residents or Overseas Filipino Workers (**OFWs**) were not subjected to 12% VAT and (4) the BIR erroneously concluded that its 'Other Income' was not declared in the VAT returns.

Based on the fact that the subject deficiency VAT computation is fairly straightforward and the foregoing grounds raised by petitioner to refute the assessment, respondent had sufficiently informed petitioner in writing of the factual and legal bases of the subject deficiency tax assessment, which enabled the latter to file an "effective" protest. Petitioner's right to due process was thus not violated.

As held in *Asalus*, substantial compliance with the requirement as laid down under Section 228[36] of the NIRC of 1997, as amended, suffices, for what is important is that the taxpayer has been sufficiently informed of the factual and legal bases of the assessment so that it may file an effective protest against the assessment.

As to my second point regarding the *ponencia*'s invocation of the Supreme Court's ruling in *Avon*, where it was held that the due process was not accorded to therein taxpayer when the BIR failed to act on or consider therein taxpayer's explanations, I submit that such ruling is *not* applicable based on the factual milieu of this case.

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29 Exhibit "P-4"/Exhibit "R-9", Exhibit "P-6"/Exhibit "R-12", Exhibit "P-8"/Exhibit "R-14" and Exhibit "P-10"/Exhibit "R-16", supra at notes 13, 2, 14 and 15, pp. 980, 1179, 994 and 1480, respectively.

30 **SEC. 106.** *Value-Added Tax on Sale of Goods or Properties.* —

31 **SEC. 107.** *Value-Added Tax on Importation of Goods.* —

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

33 *Circularizing the Full Text of Unnumbered Memorandum Dated November 12, 2007 Regarding "Table Audit of Pre-need Companies"*; underscoring supplied.

34 Exhibit "P-7", supra at note 4, p. 990.

35 Exhibit "P-9", supra at note 17.

36 Supra at note 5.

In *Avon*, the Supreme Court agreed with therein taxpayer that the CIR deprived it demonstrably of administrative due process. The relevant portion of its decision therein reads:

> ...
>
> The facts demonstrate that Avon was deprived of due process. It was not fully apprised of the legal and factual bases of the assessments issued against it. The Details of Discrepancy attached to the Preliminary Assessment Notice, as well as the Formal Letter of Demand with the Final Assessment Notices, did not even comment or address the defenses and documents submitted by Avon. Thus, Avon was left unaware on how the Commissioner or her authorized representatives appreciated the explanations or defenses raised in connection with the assessments. There was clear inaction of the Commissioner at every stage of the proceedings.
>
> First, despite Avon's submission of its Reply, together with supporting documents, to the revenue examiners' initial audit findings, and its explanation during the informal conference, the Preliminary Assessment Notice was issued. The Preliminary Assessment Notice reiterated the same audit findings, except for the alleged under-declared sales which ballooned in amount from P15,700,000.00 to P62,900,000.00, without any discussion or explanation on the merits of Avon's explanations.
>
> Upon receipt of the Preliminary Assessment Notice, Avon submitted its protest letter and supporting documents, and even met with revenue examiners to explain. Nonetheless, the Bureau of Internal Revenue issued the Final Letter of Demand and Final Assessment Notices, merely reiterating the assessments in the Preliminary Assessment Notice. There was no comment whatsoever on the matters raised by Avon, or discussion of the Bureau of Internal Revenue's findings in a manner that Avon may know the various issues involved and the reasons for the assessments.
>
> Under the Bureau of Internal Revenue's own procedures, the taxpayer is required to respond to the Notice of Informal Conference and to the Preliminary Assessment Notice within 15 days from receipt. Despite Avon's timely submission of a Reply to the Notice of Informal Conference and protest to the Preliminary Assessment Notice, together with supporting documents, the Commissioner and her agents violated their own procedures by refusing to answer or even acknowledge the submitted Reply and protest.
>
> The Notice of Informal Conference and the Preliminary Assessment Notice are a part of due process. They give both the taxpayer and the Commissioner the opportunity to settle the case at the earliest possible time without the need for the issuance of a Final Assessment Notice. However, this purpose is not served in this case because of the Bureau of Internal Revenue's inaction or failure to consider Avon's explanations.
>
> Upon receipt of the Final Assessment Notices, Avon resubmitted its protest and submitted additional documents required by the revenue examiners, including the original General Ledger for 1999. As testified by Avon's Finance Director, Mildred C. Emlano, the Bureau of Internal Revenue examiners were convinced with Avon's explanation during the meeting on

August 4, 2003, particularly, that there was no underdeclaration of sales. Still, the Commissioner merely issued a Collection Letter dated July 9, 2004, demanding from Avon the payment of the same deficiency tax assessments with a warning that should it fail to do so within the required period, summary administrative remedies would be instituted without further notice. This Collection Letter was based on the May 27, 2004 Memorandum of the Revenue Officers stating that "[Avon] failed to submit supporting documents within 60-day period." **This inaction on the part of the Bureau of Internal Revenue and its agents could hardly be considered substantial compliance of what is mandated by Section 228 of the Tax Code and the Revenue Regulation[s] No. 12-99.**

It is true that the Commissioner is not obliged to accept the taxpayer's explanations, as explained by the Court of Tax Appeals. However, when he or she rejects these explanations, he or she must give some reason for doing so. He or she must give the particular facts upon which his or her conclusions are based, and those facts must appear in the record.

Indeed, **the Commissioner's <u>inaction and omission to give due consideration to the arguments and evidence</u> submitted before her by Avon** are deplorable **transgressions of Avon's right to due process.** The right to be heard, which includes the right to present evidence, is meaningless if **the Commissioner can simply ignore the evidence without reason.**

...

Similarly, in this case, **despite Avon's submission of its explanations and pieces of evidence to the assessments**, the Commissioner failed to acknowledge these submissions and instead issued identical Preliminary Assessment Notice, Final Letter of Demand with the Final Assessment Notices, and Collection Letter, the latter being premised on Avon's alleged failure to submit supporting documents to its protest. Had the Commissioner performed her functions properly and considered the explanations and pieces of evidence submitted by Avon, this case could have been settled at the earliest possible time. For instance, all the evidence needed to settle the issue on under-declared sales, which constituted the bulk of the deficiency tax assessments, have been submitted to the Bureau of Internal Revenue. Indeed, from these same submissions, the Court of Tax Appeals concluded that there was no under-declaration of sales. As aptly pointed out by Avon, "The [Commissioner could not] feign simple mistake or misappreciation of the evidence . . . because [the issue was] plain and simple."[37]

...

As can be gleaned from the foregoing, the BIR violated therein taxpayer's right to due process when it disregarded the latter's pieces of evidence from the PAN's issuance until the release of the Collection Letter, which was ultimately appealed before this Court and the Supreme Court. Such is <u>*not*</u> the case here.

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[37] Citations omitted, emphasis and underscoring supplied.

In the case at bar, contrary to the *ponencia*'s findings that respondent did not consider petitioner's arguments, the records are rather clear that respondent took time to evaluate and consider petitioner's arguments.

Serious note should be given to the fact that, in the FDDA dated 22 September 2014[38], then Officer-In-Charge Assistant Commissioner for Large Taxpayers Service, Nestor S. Valeroso (**OIC-ACIR Valeroso**), reiterated the BIR's position that the taxable base of pre-need companies for VAT purposes shall be the gross receipts without any deduction pursuant to RMC No. 74-07.[39] OIC-ACIR Valeroso also acknowledged that the Federation of Pre-Need Companies, Inc. had protested such issuance but up until then the issue was still unsettled; hence, the deficiency VAT should be assessed pursuant to Sections 106, 107 and 108 of the NIRC of 1997, as amended, and RMC No. 74-07.

From the foregoing explanation in the FDDA (that as regards the 'undeclared premiums', respondent does not agree with petitioner's argument that the trust fund contributions should be excluded from VATable gross receipts of pre-need companies), it could not be mistaken that respondent had considered petitioner's issues or concerns.

Furthermore, given petitioner's bare contention that the items enumerated under "Other Income/Adjustments" have already been included in the amount declared as VATable sales in petitioner's VAT returns plus the fact that the trust fund contributions were not separately indicated in petitioner's VAT Official Receipts (**ORs**) as "NONVAT (Trust Fund)", which indicates that the amount declared as VATable sales *per* petitioner's 2008 VAT returns would be significantly understated and thus, could not have possibly covered or included "Other Income", it is understandable that petitioner failed to convince respondent that it had no deficiency VAT and that it even had a VAT overpayment. Expectedly, respondent thus reiterated in both the FLD and the FDDA the assessment findings stated in the PAN.

It is also noteworthy that, as discussed in the Assailed Decision[40] regarding the implied admission of the validity of the six (6) Waivers of the Defense of Prescription (waivers), petitioner benefited from the waiver's execution since, by their execution, it was allowed more time to gather and submit documents to substantiate its claims, postpone the payment of taxes, and contest and negotiate the BIR's assessment against it. Considering that six (6) waivers had been executed in this

38 Exhibit "P-10"/Exhibit "R-16", supra at note 15, p. 1483.
39 Supra at note 33.
40 Supra at note 7, p. 134.

case, it can be validly inferred that there was an exchange of correspondences and negotiations between the parties as regards the subject deficiency tax assessment.

I wish to emphasize that, following negotiations between the parties, the total deficiency tax assessment was significantly reduced. Initially, it amounted to ₱67,965,283.38 *per* NIC, which included assessments for deficiency income tax (IT), VAT, expanded withholding tax (EWT), withholding tax on compensation (WTC), documentary stamp tax (DST), and compromise penalties. Subsequently, it was lowered to ₱13,660,201.96 *per* PAN[41], FLD[42], and FDDA[43], and it comprised only the assessment for deficiency VAT. This reduction clearly indicates that, before issuing the FLD in question, respondent had duly considered the explanations and evidence provided by petitioner, leading to a reduction in the total deficiency tax assessment. This act of consideration by respondent epitomizes the essence of administrative due process.

Even in the *Avon*[44] case that the *ponencia* cited, the Supreme Court considered the principle of substantial compliance when it declared that "inaction on the part of the [BIR] and its agents could hardly be considered substantial compliance of what is mandated by Section 228 of the Tax Code and the Revenue Regulation[s] No. 12-99", as afore-quoted. It likewise emphasized that the essence of administrative due process is to be found in the reasonable opportunity to be heard and submit evidence in support of one's defense, *viz*:

> ...
>
> Administrative due process is anchored on fairness and equity in procedure. **It is satisfied if the party is properly notified of the charge against it and is given a fair and reasonable opportunity to explain or defend itself.** Moreover, it **demands that the party's defenses be considered by the administrative body in making its conclusions**, and that the party be **sufficiently informed** of the reasons for its conclusions.
>
> ...

Fundamentally, what due process abhors is the absolute lack of notice or opportunity to be heard. Thus, with due respect, the *ponencia* makes a rather swift conclusion as regards the absence of factual and legal bases (evidenced supposedly by the fact that the FLD is a substantial reiteration of the PAN). **For how else was respondent able to reduce the total**

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41 Exhibit "P-7", supra at note 4.
42 Exhibit "P-8"/Exhibit "R-14", supra at note 1.
43 Exhibit "P-10"/Exhibit "R-16", supra at note 15, p. 1483.
44 Supra at note 6; Citations omitted and emphasis supplied.

deficiency tax assessment of petitioner if the latter's explanations were not considered?

Truth be told, it is not unsurprising that the FLD is substantially a replica of the PAN, except for the adjustment to the deficiency interest computation, since, as stated in Revenue Officer Olivia Sison's (RO Sison's) Memorandum dated 24 February 2014[45], petitioner purportedly failed to comply with the prescribed time (to file a reply) stated in the PAN.

A perusal of the BIR Records (of the case) also reveals that petitioner's Reply to the PAN[46] is not found therein. Respondent's FDDA also does not mention petitioner's Reply to the PAN. Assuming for the sake of argument the existence of petitioner's Reply to the PAN is doubtful, the only reason why the subject deficiency VAT assessment could not be declared final (and no longer subject to appeal) in this case (after the PAN's issuance), is because petitioner's timely filed Reply to the PAN was admitted in evidence and respondent did not make any attempt to deny the existence thereof.

Additionally, following the *ponencia*'s logic in finding the FLD[47] in question defective for being substantially a replica of the PAN, this Court should also consider (and not gloss over the fact) that petitioner's Reply to PAN[48] is similarly defective, *i.e.*, lacks merit, for being substantially a replica of its Protest to the NIC[49] as regards the deficiency VAT assessment. Petitioner thus cannot expect respondent to respond to its arguments differently when its Reply to the PAN is a "mere rehash" of its Protest to the NIC.

In light of the above, I humbly implore that this Court tilt the scales of justice in favor of not finding a due process violation against petitioner. **Notwithstanding the reiteration of the findings in the PAN in the FLD, petitioner's prior act of failing to raise meritorious grounds in its "mere rehash" Reply to the PAN, along with the evident consideration of petitioner's explanations and evidence by respondent, as indicated by the significant reduction in the total deficiency tax assessment (leaving only the deficiency VAT assessment), should warrant a finding of substantial compliance with the due process requirements under**

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45 Exhibit "R-13", BIR Records, Folder 1, pp. 1178-1179.
46 Exhibit "P-7", supra at note 4, p. 990.
47 Exhibit "P-8"/Exhibit "R-14", supra at note 1.
48 A copy of Exhibit "P-7" is attached herewith as Annex **"A"**.
49 Exhibit "P-5", Division Docket, Volume III, pp. 982-986; A copy of Exhibit "P-5" is attached herewith as Annex **"B"**.

Section 228[50] of NIRC of 1997, as amended. Lest this Court sanctions a narrow interpretation of due process requirements that does not align with the principle of substantial compliance or the realities of tax administration.

Again, the assessment notices do not need to fully narrate the facts and laws upon which the assessment is based. It is enough that petitioner be substantially informed of the law and the facts on which the tax liability assessment is made, through any other written document presented to the taxpayer. Therefore, as long as petitioner is notified and given the opportunity to present its case, the requirements of due process are considered to be satisfactorily met.

The determination of a due process violation in the issuance of an assessment should not solely rest on the fact that the respondent restated the entire PAN in the FLD. Rather, it should be based more comprehensively on the *totality* of the circumstances, the nature of the issues raised, and, essentially, the merits of the taxpayer's arguments and evidence. <u>The Court's focus should not be on nitpicking the contents of the FLD in isolation but on assessing whether, throughout the administrative process, the taxpayer was given a fair and reasonable opportunity to contest the assessment and present its case.</u>

For the ruling in *Avon* to validly sustain the proposed action in the *ponencia*, it should be clearly established that herein petitioner was also unaware on how the CIR or his or her authorized representatives appreciated the explanations or defenses raised in connection with the assessment. **For *Avon* (*as cited* in the *ponencia*) to apply in the case at bar, the *ponencia* should have also found that there is clear evidence of inaction of the part of the CIR at <u>every</u> stage of the proceedings (*i.e.*, the CIR thrice reiterated the rebutted audit findings stated in the NIC—*first*, in issuing the PAN, *second*, in issuing the FLD, and *lastly*, in issuing the Collection Letter).**

As repeatedly emphasized, the factual circumstances in *Avon* are not the same as in this case. Unlike in *Avon*, respondent here duly considered petitioner's explanations and evidence, leading to a reduction in the total deficiency tax assessment and issued the FLD in question beyond the fifteen (15)-day reglementary period to file a reply to the PAN. Building on the said notable distinctions, the CIR's findings in the *Avon* case were reiterated multiple times, whereas, in this case, a similar

50 Supra at note 5.

reiteration occurred only once (specifically, the FLD is substantially a replica of the PAN).

Moreover, OIC-ACIR Valeroso clarified in the FDDA the reasons for the BIR's stance on the deficiency VAT assessment. If anything, respondent's reiteration of the findings in the PAN, in issuing the FLD in question, simply indicates that petitioner's arguments against the deficiency VAT assessment were found to be without merit, thus failing to overcome the presumption of regularity and correctness of respondent's assessment.

With the foregoing and with the strikingly noticeable different factual circumstances of the *Avon* case cited in the *ponencia* and herein case, the more appropriate ruling would be *Asalus* which sanctions substantial compliance with the requirements laid down under Section 228[51] of the NIRC of 1997, as amended.

While the *ponencia* cited various cases where this Court applied *Avon* to nullify assessments due to the *verbatim* reiteration of the PAN in the FLD (without the BIR addressing the taxpayer's arguments or explanations in their reply or protest to the PAN), it is crucial to acknowledge that the factual circumstances in those cases differ from the present one. Moreover, there is a lack of discussion in those cases regarding why the substantial compliance rule cannot apply. Conversely, the uniqueness of the circumstances in this case should prompt the Court to cautiously apply *Avon*'s ruling, setting clear parameters for its application as an exception to the general rule of substantial compliance with the due process requirements under Section 228 of the NIRC of 1997, as amended.

A survey of Supreme Court cases citing *Avon* also reveals that it was not applied to invalidate an assessment based solely on the finding that the FLD is a mere reiteration of the PAN. Notably, in *Prime Steel Mill, Incorporated v. Commissioner of Internal Revenue*[52] (**Prime Steel**), the Supreme Court said that there should be strict compliance with the due process requirements but only with respect the 15-day reglementary period to file a reply to the PAN. Similarly, in *Commissioner of Internal Revenue v. Yume Philippines Corporation*[53] (**Yumex**), the Supreme Court upheld the due process violation since therein taxpayer received both the PAN and the FLD on the same date. Then, in *Commissioner of Internal Revenue v. Maxicare Healthcare Corporation*[54] (**Maxicare**), the Supreme Court held that therein taxpayer's

[51] Supra at note 5.
[52] G.R. No. 249153, 12 September 2022.
[53] G.R. No. 222476, 05 May 2021.
[54] G.R. No. 261065, 10 July 2023.

right to due process was violated because it was denied the opportunity to present its evidence as would afford it a genuine opportunity to be heard, but this time as regards the sixty (60)-day period within which to provide relevant supporting documents pursuant to its request for reinvestigation.

Clearly, with the foregoing parameters on the applicability the ruling in *Avon*, the strict compliance with the due process requirements set forth in Section 228[55] of the NIRC of 1997, as amended, mentioned in *Prime Steel*, *Yumex* and *Maxicare*, pertains only to the periods provided in the said provision, implemented by Revenue Regulations (**RR**) No. 12-99, as amended.

Given the foregoing considerations and the fact that petitioner was able to challenge respondent's findings and give a more detailed explanation regarding the assessment (although unsuccessful), I reiterate my position that the assailed deficiency VAT assessment substantially complied with the due process requirement under Section 228 of the NIRC of 1997, as amended.

All told, I vote to **DENY** the instant Petition for Review for lack of merit and thereby, **AFFIRM** the Second Division's Assailed Decision and Resolution.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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[55] Supra at note 5.

Annex "A"

Transnational Plans, Inc.

EXHIBIT "P-7"

FAITHFUL REPRODUCTION OF THE ORIGINAL FEB 0 2 2017 PETITIONER

13 February 2014

LARGE TAXPAYERS SERVICE RECEIVED FEB 1 4 2014 BUREAU OF INTERNAL REVENUE

Mr. Alfredo Misajon
OIC, Assistant Commissioner
Large Taxpayers Service
Revenue District Office No. 125
Bureau of Internal Revenue
Agham Road, Quezon City

RE: TRANSNATIONAL PLANS, INC.
PRELIMINARY ASSESSMENT NOTICE
FOR TAXABLE YEAR 2008

Gentlemen:

We refer to your Preliminary Assessment Notice (PAN) dated 28 January 2014[1] which we received on 30 January 2014 informing Transnational Plans, Inc. (TPI) of the report of investigation covering all its internal revenue taxes for the calendar year ending December 31, 2008.

We respectfully protest the assessed deficiency tax findings based on factual and legal grounds as will be shown and discussed hereunder.

VALUE-ADDED TAX (VAT)

Below is your calculation of the assessed deficiency VAT due:

Collection		P141,730,991.00
Add: Other Income/Adjustments		
Other Income	5,062,538.00	
Commission Income	1,167,909.00	
Processing Fee	594,516.00	
Surcharge and Lapsed Plan	2,884,424.00	
Miscellaneous Fee	1,750,715.00	
Undeclared Purchases (SLP vs. AIETEID vs MAP)	3,489.98	
Undeclared Sales (SLS vs. AIETEID vs SAWT)	24,010.43	11,487,602.41

[1] Attached as Annex "A" a copy of the Preliminary Assessment Notice

Ground Floor Mary Bachrach Building, corner 25th & A.C. Delgado Streets, Port Area, Manila
Tel: 328-3450 • Fax No. 310-9277
E-mail : tpi@tpi.com.ph

Total Vatable Sale		P153,218,593.41
Rate		.12
Output Tax per Audit		P 18,386,231.21
Less: Input		459,220.76
VAT Payable		P 17,927,010.45
Less: VAT Payment		4,266,808.49
VAT still due		P13,660,201.96
Add: Interest (computed up to 1.31.14)	P13,712,597.25	
Compromise Penalty	50,000.00	13,762,597.25
Amount still due		**P27,422,799.21**

The basis of BIR on the above computation is Section 106, 107 and 108 of the National Internal Revenue Code (NIRC) and Revenue Memorandum Circular (RMC) No. 74-07.

We respectfully protest the above computations, based on the following grounds:

First, actual trust fund contributions were not taken into account.

Section 4.108-3(j) of Revenue Regulations (RR) No. 16-2005 dated September 1, 2005, provides that as service providers, the compensation of pre-need companies is the premium or payments received from the plan holders.

According to BIR Ruling (DA-027-2006) dated 31 January 2006, signed and issued by Commissioner Jose Mario C. Bunag to the Philippine Federation of Pre-Need Companies, Inc., (PFPPC) the BIR ruled that the gross receipts of pre-need companies for VAT purposes should only be the premium or payment collected from the planholders excluding the "funds" provided by the planholders, which are being managed by the pre-need companies for them. We quote pertinent portion of the ruling to wit:

> "The "funds" provided by the planholders, which are being managed by the pre-need companies, pertain to such amount of trust fund contributions as mandated by SEC. Therefore, such amount of trust fund contributions do not form part of the gross receipts of the pre-need companies for purposes of determining their gross receipts subject to 10% (now 12%) VAT. To disallow such amount credited to the trust fund would be tantamount to taxing that percentage of contributions of plan holders earmarked as

reserved fund to guarantee the payment of services and/or delivery of the property or cash/termination value to plan holders. (BIR Ruling UN-248-A-95)"[2]

The Trust Fund is mandated by the SEC and held in Trust by a Trustee Bank. The Trust Fund is earmarked for no other purpose than to pay off the maturity value to planholders. TPI never benefitted directly or indirectly from this Trust Fund, where TPI exercises no discretion as its management nor to its disposal or disposition as the power thereon was purely vested to the Trustee Bank. The corresponding fund merely passes through the hands of TPI as if TPI acts as an intermediary between the planholders and the trustee bank.

Corollarily, RMC No. 74-2007 is also an industry issue and is being protested by the PFPPC with the Commissioner of Internal Revenue. We participated in the dialogue held by the PFPPC with BIR Commissioner Ms. Lilian Hefti last January 30, 2008 at the BIR National Office in Quezon City where Ms. Hefti admitted they will still have to study further the issue. She advised that meantime, pre-need companies can still use the old computation for VAT base that is, Gross Receipts net of Trust Fund Contribution. She also apprised PFPPC that she has given the directive to stop audit involving VAT on pre-need plans.

Further, in 2009, Congress passed Republic Act (RA) 9829 also known as The Pre-Need Code of the Philippines[3], promulgated on December 3, 2009, which defines the nature of trust funds and expressly provides that such amount is excluded from the computation of gross receipts of a pre-need company. The following are the pertinent provisions regarding contributions to the trust funds:

> "*Section 30. Trust Fund.* x x x *Assets in the trust fund shall at all times remain for the sole benefit of the planholders. At no time shall any part of the trust fund be used for or diverted to any purpose other than for the exclusive benefit of the planholders. In no case shall the trust fund assets be used to satisfy claims of other creditors of the pre-need company, the general creditors shall not be entitled to the trust fund.*
>
> x x x
>
> *Section 31. Deposits to the Trust Fund.* x x x

[2] Attached as Annex "B" is a copy of the BIR Ruling DA-027-2006
[3] Attached as Annex "C".

Contributions to the trust fund shall not form part of the income or gross receipts of the pre-need company, and therefore shall not be available for dividend declaration or payment to creditors ."

Based on the above, it is clear from RA 9829 contributions to the trust fund shall not form part of gross receipts thus, not subject to income tax or VAT.

We provide below our analysis of VAT for taxable year 2008:

For the year 2008, total gross income of the company subject to VAT after deducting the actual trust fund contribution, trust fund income and interest income is **P33,764,653** broken down as follows:

Collection of Premiums per Audited FS[4]	P 132,204,768
Trust Fund Income	18,972,049
Other Income	12,375,229
Total Gross Income per FS	P 163,552,046
Add: Undeclared Purchases per BIR	3,490
Undeclared Sales per BIR	24,010
Less: Trust Fund Contribution	(109,927,717)
Trust Fund Income	(18,972,049)
Interest Income from Savings Account	(915,127)
Total Income subject to VAT	**P33,764,653**
12% VAT	4,051,758
Less: Input VAT	(459,221)
VAT Payable	3,592,537
Less: Actual VAT Payments[5]	(4,266,808)
VAT Payable (Overpayment)	**(P 674,271)**

***Second*, BIR included in its computation the Related Parties account and considered the changes in said account as part of trade receivables of TPI**

[4] Attached as Annex "D".
[5] Attached as Annex "E" are the copies of the VAT returns for 2008 totaling P4,266,808.

Please note that the Related Parties account does not form part of TPI's trade receivables as it constitute TPI's advances to its affiliated companies and not related to the business of TPI as pre-need company and therefore should not be subjected to VAT.

Hoping you find the above explanations in order.

Respectfully yours,

Marivic M. Anciado
Chief Accountant

Noted by:

Ma. Veronica S. Lao Guico
President/General Manager

Ma. Cecilia L. Evangelista
Division Comptroller

Annex "B"

Transnational Plans, Inc.

"P-5"
EXHIBIT
FAITHFUL REPRODUCTION OF THE ORIGINAL
FEB 02 2017
PETITIONER

BUREAU OF INTERNAL REVENUE
LT REGULAR AUDIT DIVISION 1
RECEIVED
JUN 04 2013
By: Time:
Cecille Camarinta

Ref: TPI 13-05-028

29 May 2013

MR. ALFREDO V. MISAJON
OIC-Assistant Commissioner
Large Taxpayers Service
Revenue District Office No. 116
Agham Road, Quezon City

Dear Mr. Misajon,

This is in reference to LOA no. 00033713 dated July 1, 2009 issued to Transnational Plans, Inc. (TPI) regarding examination of TPI's books of accounts for the year 2008. The Notice of Informal Conference (NIC) was received last 08 May 2013 with the attached proposed assessment as recommended by Revenue Officer Ms. Olivia S. Sison under the supervision of Ms. Olivia F. Aviles.

Discussed hereunder are our explanations for each item listed as per Annex A

I. Deficiency on Income Tax

1. **Undeclared Purchases (SLP vs. AITEID vs. MAP)** P3,489.98
   - We would like to request for the details of P3,489.98 for us to properly explained the variance

2. **Undeclared Sales (SLS vs. AITEID vs. SAWT)** 24,010.43
   - We would like to request for the details of P24,010.43 for us to properly explained to variance

3. **Expenses not subject to EWT** – we shall send our explanation on or before 14 June 2013

4. **Plan Benefit Expenses**

   In the computation presented, Plan Benefit Expense of **P40,536,187** was disallowed. Kindly note that per RMC 04-03 where it discusses Gross Receipts per Industry, withdrawals are considered as a deduction from the gross income, per item ii which we quote:

   "Insurance and pension funding companies refer to those engaged in life and non-life insurance business as defined under the Insurance Code and pre-need companies, including health maintenance organizations. ***Their gross receipts shall mean actual or constructive receipts representing: net retained premiums*** (gross premiums net of returns, cancellations, and premiums ceded)/gross premium or collection from planholders; membership fees (in the case of HMOs); miscellaneous income; investment

loor Mary Bachrach Building, corner 25th & A.C. Delgado Streets, Port Areo, Manila
3450 • Fax No. 310-9277
pi@tpi.com.ph

income not subject to final tax; released reserve ***and, in the case of pre-need companies, gross withdrawals from the trust funds set-up independently as mandated by the Securities and Exchange Commission (SEC);*** and, all other items treated as gross income under Section 32 of the Tax Code. Their costs of services shall refer to those incurred directly and exclusively in the insurance and pre-need business, including the generation of investment income not subject to final taxes, and shall be limited to the following:

1. Salaries, wages and other employee benefits of personnel directly engaged in said activities;
2. Commissions on direct writings/agents of pre-need companies;
3. Claims, losses, maturities and benefits net of reinsurance recoveries and,
4. Net additions required by law to reserve fund (for insurance companies) ***and in the case of pre-need companies, contributions to the trust funds set-up independently as mandated by the SEC.***

Kindly note that the actual amount reflected in the Income Statement as Net Increase in Pre-Need Reserves (PNR) of P84,284,382 is already net of the actual withdrawals and contributions to the fund. It also includes reserves for plans which were paid during the year. Actual trust fund contribution is not claimed as expense, only the Net Increase/Decrease in PNR is taken up in the Income Statement.

5. On **Trust Fund Income,** kindly note that it is not subject to VAT as this was already subjected by the Trustee Banks to the Final Tax. All income earned by the Trust Fund is just added by the Trustee Bank as part of the trust fund asset of the company.

It was also clarified as per RMC No. 28-2003 that Trust Funds managed by banks and other financing institutions are not subject to VAT.

Disallowed Creditable Withholding Tax – attached are copies of 2307 issued by Transnational Logistics Corp. as proof of withholding in favor of TPI.

II. Deficiency on Value Added Tax

On Value Added Tax, kindly note that VAT is computed net of Trust Fund Contribution and is not based on gross receipt of premium.

According to BIR Ruling (DA-027-2006) dated 31 January 2006, signed and issued by then Commissioner Jose Mario C. Bunag to the Federation, the BIR ruled that the gross receipts of pre-need companies for VAT purposes should only be the premium or payment collected from the plan holders excluding the "funds" provided by the plan holders, which are being managed by the pre-need companies for them. We quote pertinent portion of the ruling to wit:

> "The "funds" provided by the plan holders, which are being managed by the pre-need companies, pertain to such amount of trust fund contributions as mandated by the SEC. Therefore, such amount of trust

> fund contributions do not form part of the gross receipts of the pre-need companies for purposes of determining their gross receipts subject to 10% (now 12%) VAT. To disallow such amount credited to the trust fund would be tantamount to taxing that percentage of contributions of plan holders which actually are held in trust by the pre-need companies, and earmarked as reserved fund to guarantee the payment of services and/or delivery of the property or cash surrender/termination value to plan holders. (BIR Ruling UN-248-A-95)".

The Trust Fund is mandated by the SEC and held in Trust by a Trustee Bank. The Trust Fund is earmarked for no other purpose than to pay off the maturity value to planholders. TPI never benefitted directly or indirectly from this Trust Fund, where TPI exercises no discretion as its management nor to its disposal or disposition as the power thereon was purely vested to the Trustee Bank. The corresponding fund merely passes through the hands of TPI as if TPI acts as an intermediary between the planholders and the trustee bank.

Corollarily, we understand that RMC No. 74-2007 is also an industry issue. The BIR position embodied in RMC 74-2007 is being questioned by the Philippine Federation of Pre-need Plan Companies (PFPPC) with the Commissioner of Internal Revenue. We participated in the dialogue held by the PFPPC with then BIR Commissioner Ms. Lilian Hefti last January 30, 2008 at the BIR National Office in Quezon City where Ms. Hetti admitted they will still have to study further the issue. She advised that meantime, pre-need companies can still use the old computation for VAT base that is, Gross Receipts net of Trust Fund Contribution. She also apprised PFPPC that she has given the directive to stop audit involving VAT on pre-need plans.

In 2009, Congress passed a law known as Republic Act (RA) 9829 promulgated on December 3, 2009, (An Act Establishing the Pre-Need Code of the Philippines, which defines the nature of trust funds and expressly provides that such amount is excluded from the computation of gross receipts of a pre-need company. The following are the pertinent provisions regarding contributions to the trust funds:

1. Assets in the trust fund shall at all times remain for the sole benefit of the plan holders. At no time shall any part of the trust fund be used for or diverted to any purpose other than for the exclusive benefit of the plan holders. In no case shall the trust fund assets be used to satisfy claims of other creditors of the pre-need company, the general creditors shall not be entitled to the trust fund (Section 30).

2. Contributions to the trust fund shall not form part of the income or gross receipts of the pre-need company, and, therefore shall not be available for dividend declaration or payment to creditors (Section 31)

Based on the above, it is clear from the law that it did not intend to include such contribution to the trust fund from gross receipts subject to income tax or VAT.

For the year 2008, total gross income of the company subject to VAT after deducting the actual trust fund contribution, trust fund income and interest income is P 33,764,653 broken down as follows:

Premium	P132,204,768
Trust Fund Income	18,972,049
Other Income	12,375,229
Total Gross Income per FS	P163,552,046
Add: Undeclared Purchases per BIR	3,490
Undeclared Sales per BIR	24,010
Less: Trust Fund Contribution	(109,927,717)
Trust Fund Income	(18,972,049)
Interest Income from Savings Acct.	(915,127)
Total Income Subject to VAT	**P 33,764,653**
12% VAT	P 4,051,758
Less: Input VAT	459,221
Vat Payable	P 3,592,537
Less: Actual VAT Payments	4,266,808
VAT Payable (Overpayment)	**(P 674,271)**

III. Deficiency on Expanded Withholding Tax

We shall send our explanation on or before 14 June 2013

IV. Deficiency on Withholding Tax on Compensation

For withholding tax on compensation we have no deficiency as per below breakdown of alpholist:

Schedule 7.1 Alphalist of employees Terminated Before Dec. 31	P 487.20
Schedule 7.3 Alphalist of employees with No Previous Employer	1,256,298.11
Schedule 7.4 Alphalist of employees with Previous Employer	12,268.87
Less: Tax Withheld by Previous Employer	(394.52)
Total per Alphalist	**P 1,268,659.66**
Total tax due on Salaries per FS	**(P 1,268,659.66)**
Deficiency	**-nil-**

Attached are the copies of alphalist for your kind reference.

IV. Documentary Stamp Tax - Total Assessment of **P50,348.98** inclusive of interest and compromise penalty was paid on 03 June 2013. Attached herewith is the photocopy of proof of payment.

V. Compromise Penalty – Total Assessment of **P75,000.00** was paid on 03 June 2013. Attached herewith is the photocopy of proof of payment.

Respectfully yours,

Ms. Marvic M. Anciado
Chief Accountant

Noted by:

Ma. Veronica S. Lao Guico
President and General Manager

Ma. Cecilia L. Evangelista
Division Comptroller