INTERESTING PENALTY: PROPOSED GUIDELINES ON THE IMPOSITION OF PENALTY INTEREST IN TAX CASES*

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ABSTRACT

The Tax Code provides for remedies in favor of the government in case of failure of the taxpayer to comply with its provisions. Criminal charges may be filed whenever there is deliberate intent to evade or defeat the payment of any tax. But in most cases of assessments without such criminal intent, the Tax Code provides for civil penalties that are considered "additions" to the tax, which may be in the form of surcharge, interest and, in certain instances, compromise penalties. There are two types of interest that may be imposed: *deficiency* and *delinquency* interest. However, the imposition of these two separate and distinct kinds of interest has not been a straightforward affair. Tracking the legislative history of the Tax Code, examining its text, culling the intent of its authors, and harmonizing the existing jurisprudence on the matter, this Note offers guidelines on how penalty interest may be imposed. With *deficiency* having a technical meaning under the Tax Code, deficiency interest is only imposed on certain types of national internal revenue taxes. The law likewise sanctions its simultaneous imposition together with delinquency interest to cover assessments before the enactment of the Tax Reform for Acceleration and Inclusion Law, and which shall be reckoned from the due date found in the Formal Letter of Demand and Final Assessment Notice, and not to any assessment notice rendered thereafter. Lastly, the exemption on the imposition of interest, which is not

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provided for in the Tax Code but only in precedent, is construed to apply only after compliance with the stated requisites, and not to be invoked wantonly. These guidelines present a comprehensive approach on how penalty interest in tax cases is to be computed and imposed.

INTRODUCTION

There is an undeniable feeling of consternation felt by anyone who hears the taxman knocking at his or her door. Some people have even felt fear in filing their returns and paying their taxes,[1] what more when the authorities have come to examine if those returns filed and taxes paid were correct? In the Philippines, the audit and examination by officers of the Bureau of Internal Revenue (BIR) of any taxpayer may result in the issuance of an assessment for any deficiency tax. Most of the time, this notice does not only pertain to the basic tax due, but will include the demand for payment of the concomitant penalties prescribed by the National Internal Revenue Code ("NIRC").[2] This added liability on the part of the taxpayer would surely produce more headaches, considering that it has been considered, even by the government itself, as "oppressive and confiscatory,"[3] until the enactment of the Tax Reform for Acceleration and Inclusion ("TRAIN") Law.[4]

Failure to pay the correct tax may lead to civil or criminal charges, or both. Criminal charges may be brought by the BIR, through the public prosecutor, if there is determined to be a "willful" attempt to evade or defeat any tax imposed by the Tax Code.[5] This is a form of *tax evasion*, which is "a scheme used outside of those lawful means and when availed of [...] usually subjects the taxpayer to further or additional civil or criminal liabilities."[6] For there to be tax evasion, there should be a confluence of the following factors, namely: "(1) the end to be achieved, *i.e.*, the payment of less than that known

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[1] *See* Charles Delafuente, *A Paralyzing Fear of Filing Taxes*, NEW YORK TIMES, Apr. 11, 2009, *available at* https://www.nytimes.com/2009/04/12/weekinreview/12delafuente.html (last accessed May 5, 2019).

[2] TAX CODE. The National Internal Revenue Code or Rep. Act No. 8424 (1997), *amended by* Rep. Act No. 10963 (2017).

[3] Department of Finance, *TRAIN removes oppressive rates for delinquent tax payments*, DEPARTMENT OF FINANCE WEBSITE, Feb. 14, 2018, *at* https://www.dof.gov.ph/taxreform/index.php/2018/02/14/train-removes-oppressive-rates-delinquent-tax-payments/ (last accessed May 5, 2019).

[4] Rep. Act No. 10963 (2017). Tax Reform for Acceleration and Inclusion (TRAIN).

[5] TAX CODE, § 254.

[6] Commissioner of Internal Revenue v. Est. of Toda, G.R. No. 147188, 438 SCRA 290, 298–99 (2004).

by the taxpayer to be legally due, or the non-payment of tax when it is shown that a tax is due; (2) an accompanying state of mind which is described as being 'evil,' in 'bad faith,' 'willful,' or 'deliberate and not accidental'; and (3) a course of action or failure of action which is unlawful."[7] Other violations of the Tax Code subject to criminal prosecution include the audit by the books of the taxpayer by one who is not an independent Certified Public Accountant or a financial officer;[8] signing of the financial statements accompanying the return but without audit;[9] offering the use of accounting bookkeeping records not in conformity with tax laws, rules and regulations;[10] the use of two or more sets of books of accounts;[11] making false entries or names in the books;[12] and even failing to translate the books in a language used in the Philippines.[13]

An accused convicted of violation of Section 254 of the NIRC is liable to pay a fine of not less than PHP 500,000.00 but not more than PHP 10,000,000.00, and be sentenced to not less than six years but not more than 10 years of imprisonment.[14] If a corporation is found to have violated any of the penal provisions of the Tax Code, the penalty is imposed on the partner, president, general manager, branch manager, treasurer, officer-in-charge, and the employees responsible for the violation,[15] but the corporation may nevertheless be still fined for not less than PHP 50,000.00 but not more than PHP 100,000.00.[16]

However, assessments made by the BIR and pending with the courts are mostly civil cases. For example, for the year 2015, there are 231 criminal cases pending before the Court of Tax Appeals (CTA) in its divisions, as compared to 698 ordinary civil cases. Hence, only 24.87% of pending cases before the divisions are criminal cases.[17] For 2018 alone, only 38 criminal cases were filed before the CTA, of which seven have been decided or resolved.[18]

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[7] *Id.* at 299.

[8] TAX CODE, § 257(B)(1).

[9] TAX CODE, § 257(B)(2).

[10] TAX CODE, § 257(B)(3).

[11] TAX CODE, § 257(B)(5).

[12] TAX CODE, § 257(B)(4).

[13] TAX CODE, § 257(B)(7).

[14] TAX CODE, § 254.

[15] TAX CODE, § 253(d).

[16] TAX CODE, § 256.

[17] Court of Tax Appeals, *CTA Annual Report for CY 2015*, COURT OF TAX APPEALS WEBSITE, *at* http://cta.judiciary.gov.ph/pdfv/web/viewer.html?file=http://cta.judiciary.gov.ph/reports/download/cta_annual_report_2015 (last accessed May 8, 2019).

[18] Court of Tax Appeals, *Status of Criminal Cases Filed from 01-Jan-18 to 31-Dec-18*, COURT OF TAX APPEALS WEBSITE, *at* http://cta.judiciary.gov.ph/pdfv/web/viewer.html?fil

And the sad state of affairs even points to a low conviction rate, as less than one percent of the more than 1,000 alleged tax evasion cases filed have resulted in conviction in the past 13 years.[19]

Notwithstanding the penal provisions of the NIRC, it must be noted that tax law is generally considered civil in nature,[20] hence the civil penalties. The imposition of such penalties for the failure of the taxpayer to file the right return and pay the correct tax has been on the statute books of the Philippines since the colonial period. During the period of Spanish occupation, income tax was imposed on all jobs except agriculture starting in 1878, and levied under the guise of two taxes: (1) the tax on the annual rental value of urban real estate, or the so-called "*urbana*" tax; and (2) the tax on salaries, dividends and profits or the "industrial" tax.[21] Penalty in case of delinquency of the "*urbana*" tax is 10%,[22] while the penalty for the "industrial" tax is 25%, plus 25 Mexican cents per day for expenses of collection.[23]

With the enactment of the Internal Revenue Law of 1904[24] during the American colonial period, civil penalties on delinquency payment of taxes were likewise imposed, but dependent on the type of tax.[25] With the introduction of the income tax in the United States following the ratification of 16th Amendment to the Federal Constitution,[26] the Philippines followed suit by enacting its own income tax law in 1919, which likewise imposed civil penalties in case of violations of said law.[27] With the first codification of the country's tax laws under Commonwealth Act ("C.A.") No. 466 or the NIRC of 1939, the first mention of *surcharge* and *delinquency interest* was made.[28] Subsequent changes were introduced by amendatory legislation after the War. However, the biggest change came with the enactment of Presidential Decree ("P.D.") No. 1158 or the National Internal Revenue Code of 1977, as

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e=http://cta.judiciary.gov.ph/reports/download/reports_status_of_criminal_cases_2018 (last accessed May 8, 2019).

[19] Ben De Vera, *Less than 1% of tax evasion cases won by gov't*, PHIL. DAILY INQUIRER, Feb. 20, 2019, *available at* https://business.inquirer.net/265345/less-than-1-of-tax-evasion-cases-won-by-govt (last accessed May 8, 2019).

[20] Commissioner of Internal Revenue v. Reyes, G.R. No. 159694, 480 SCRA 382, 397 (2006).

[21] Carl Plehn, *Taxation in the Philippines*, 16 POL. SCI. Q. 680, 701 (1901).

[22] *Id.* at 703.

[23] *Id.* at 709.

[24] Act No. 1189 (1904). An Act to Provide for the Support of the Insular, Provincial and Municipal Governments, by Internal Taxation.

[25] Act No. 1189 (1904), §§ 33, 112, 122, 145.

[26] 40 Stat. 1057 (1918). Revenue Act of 1918.

[27] Act No. 2833 (1919), §§ 14(c), 17.

[28] *See* Com. Act No. 466 (1939), §§ 51(e), 72, 101.

amended by P.D. No. 1994, which, for the first time, consolidated all provisions regarding civil penalties in Chapter I, Title XI thereof. It is in Sections 282 and 283 that the present form of civil penalties has taken shape. The same Sections would be substantially copied and carried over to the National Internal Revenue Code of 1997, or the present Tax Code,[29] under Sections 248 and 249. The most recent amendments to these Sections were introduced by TRAIN.

Under the current Tax Code, there are generally two types of civil penalties that are considered "additions" to the tax due; these are the *surcharge* and *interest*.[30] Under Section 248 of the Tax Code, there are two rates of surcharges: 25% and 50%. The 25% surcharge is imposed when there is:

> (1) Failure to file any return and pay the tax due thereon as required under the provisions of th[e] [Tax] Code or rules and regulations on the date prescribed; or
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> (2) Unless otherwise authorized by the Commissioner, filing a return with an internal revenue officer other than those with whom the return is required to be filed; or
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> (3) Failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessment; or
>
> (4) Failure to pay the full or part of the amount of tax shown on any return required to be filed under the provisions of this Code or rules and regulations, or the full amount of tax due for which no return is required to be filed, on or before the date prescribed for its payment.[31]

On the other hand, the 50% surcharge is imposed when there is willful neglect to file the return within the period prescribed by the Tax Code or by revenue regulations, or when a false or fraudulent return is willfully made.[32] Failure to report sales, receipts or income exceeding 30% of that declared in the return constitutes substantial under-declaration, which is a *prima facie* evidence of a false or fraudulent return.[33] Plainly, when there is such a substantial under-declaration, there is a presumption that the taxpayer filed a *false* return. Hence, the BIR need not immediately present evidence to

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[29] Rep. Act No. 8424 (1997).

[30] Bureau of Internal Revenue, *Penalties*, BUREAU OF INTERNAL REVENUE WEBSITE, *at* https://www.bir.gov.ph/index.php/penalties.html (last accessed May 12, 2019).

[31] TAX CODE, § 248(A).

[32] TAX CODE, § 248(B).

[33] TAX CODE, § 248(B).

support the falsity of the return.[34] But where *fraud* is alleged, such must be actual fraud, not constructive, and "must amount to intentional wrongdoing with the sole object of avoiding the tax."[35]

But perhaps the more interesting of the civil penalties which has evoked much controversy, as will be discussed hereafter, is the imposition of *interest*. Interest, in its legal sense, pertains to the "legal share in something; all or part of a legal or equitable claim to or right in property."[36] However, this is not the definition that the Tax Code refers to. As much as tax is related to money, interest in this context is simply "the cost of borrowing money."[37] It is based on the financial principle that the cost of money today would not be the same as in the future because the peso now can be invested and earn positive returns—this is called the *time value of money*.[38]

The concept of interest discussed above is what the Supreme Court calls *monetary interest*, or the "compensation fixed by the parties for the use or forbearance of money."[39] The usual loan contracts, called *mutuum*, may have stipulations imposing this kind of interest,[40] which must be expressly stated in writing to be enforceable,[41] and must not be unconscionable.[42] For easy understanding on how compensatory interest is computed and applied, reference is made to the seminal case of *Eastern Shipping Lines, Inc. v. Court of Appeals*,[43] as restated in *Nacar v. Gallery Frames*.[44] On the other hand, interest may also be imposed by law or by the courts as penalty or indemnity for damages, for which it is called *compensatory interest* or *penalty interest*.[45] Even though not stipulated in writing, compensatory interest of 6% per annum may be imposed when the debtor incurs delay in the repayment of a sum of money,[46] or it may likewise be imposed on the monetary interest due from the time it is judicially demanded.[47]

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[34] Commissioner of Internal Revenue v. Asalus Corp., G.R. No. 221590, 818 SCRA 543, 555 (2017).

[35] Commissioner of Internal Revenue v. Air India, G.R. No. 72443, 157 SCRA 648, 656 (1988), *citing* Aznar v. Ct. of Tax Appeals, G.R. No. 20569, 58 SCRA 519, 543 (1974).

[36] *Interest,* BLACK'S LAW DICTIONARY 885 (9th ed. 2009).

[37] Abella v. Abella, G.R. No. 195166, 762 SCRA 221, 232, (2015).

[38] LAWRENCE J. GITMAN, PRINCIPLES OF MANAGERIAL FINANCE 162 (12th ed. 2009).

[39] Siga-an v. Villanueva, G.R. No. 173227, 576 SCRA 696, 704 (2009).

[40] CIVIL CODE, art. 1933.

[41] CIVIL CODE, art. 1956.

[42] Abella v. Abella, G.R. No. 195166, 762 SCRA 221, 239 (2015). "The imposition of an unconscionable interest rate is void *ab initio* for being 'contrary to morals, and the law.'"

[43] G.R. No. 97412, 234 SCRA 78 (1994).

[44] G.R. No. 189871, 703 SCRA 439 (2013).

[45] Siga-an v. Villanueva, G.R. No. 173227, 576 SCRA 696, 704 (2009).

[46] CIVIL CODE, art. 2209.

[47] CIVIL CODE, art. 2212.

The interest imposed by the Tax Code is, although found in Title X named "Statutory Offenses and Penalties", not necessarily a form of compensatory or penalty interest, but monetary interest. The Supreme Court has held that interest on taxes is not a penalty, but a form of "just compensation to the [S]tate for the delay in paying the tax, and for the concomitant use by the taxpayer of funds that rightfully should be in the government's hands."[48] The intention of the Tax Code is to discourage delay in the payment of taxes due to the government, so interest on taxes is a form of "compensation" for the use of funds by the taxpayer beyond the date when he is supposed to have paid the government.[49] Even though it is colloquially called penalty interest, such is not actually a penalty in its essence. It is merely compensation to the government for the latter's foregone revenue.

Whatever the classification of interest on taxes be, whether monetary or compensatory, it is still the NIRC of 1997, as special law, that governs its imposition, and not the Civil Code, applying the legal maxim *lex specialis derogat generali*.[50] Section 249 of the Tax Code, as amended by TRAIN, stipulates the rules governing the imposition of interest, as follows:

> SEC. 249. *Interest.*—
>
> (A) *In General.*—There shall be assessed and collected on any unpaid amount of tax, interest at the rate of double the legal interest rate for loans or forbearance of any money in the absence of an express stipulation as set by the Bangko Sentral ng Pilipinas from the date prescribed for the payment until the amount is fully paid: *Provided*, That in no case shall the deficiency and the delinquency interest prescribed under Subsections (B) and (C) hereof, be imposed simultaneously.
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> (B) *Deficiency Interest.*—Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof, or upon issuance of a notice and demand by the Commissioner of Internal Revenue, whichever comes earlier.

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[48] Commissioner of Internal Revenue v. Itogon-Suyoc Mines, Inc., G.R. No. 25299, 28 SCRA 867, 871 (1969).

[49] Philippine Refining Co. v. Ct. of Appeals, G.R. No. 118794, 256 SCRA 667, 678 (1996).

[50] *See* Air Canada v. Comm'r of Internal Revenue, G.R. No. 169507, 778 SCRA 131, 173 n.119 (2016).

> (C) *Delinquency Interest.*—In case of failure to pay:
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> (1) The amount of the tax due on any return to be filed, or
> (2) The amount of the tax due for which no return is required, or
> (3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax.
>
> (D) *Interest on Extended Payment.*—If any person required to pay the tax is qualified and elects to pay the tax on installment under the provisions of this Code, but fails to pay the tax or any installment hereof, or any part of such amount or installment on or before the date prescribed for its payment, or where the Commissioner has authorized an extension of time within which to pay a tax or a deficiency tax or any part thereof, there shall be assessed and collected interest at the rate hereinabove prescribed on the tax or deficiency tax or any part thereof unpaid from the date of notice and demand until it is paid.

In sum, the Tax Code imposes two kinds of interest: *delinquency interest* and *deficiency interest.* Currently, the rate of interest for both types is at 12% per annum, as implemented under Revenue Regulations ("R.R.") No. 21-2018 dated September 14, 2018, taking into consideration *Bangko Sentral ng Pilipinas* (BSP) Circular No. 799, series of 2013, which set the rate of interest for loan and forbearance of money, goods or credits at 6% per annum. Previously, from the enactment of the NIRC of 1997 on January 1, 1998 until December 31, 2017,[51] the rate for both deficiency and delinquency interest was 20% per annum.

The imposition of deficiency and delinquency interest may look straightforward, but a number of constitutional issues regarding due process and equal protection have arisen. For one, the very imposition of deficiency interest has been in question. In a case decided by the CTA in 2012, it was ruled that deficiency interest may be imposed on *all* kinds of national internal revenue taxes mentioned in the Tax Code, even though the term "deficiency" has a technical meaning only under certain sections of the Code.[52] If this view

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[51] TRAIN went into force and effect on January 1, 2018 following its publication in the Official Gazette or in at least one newspaper of general circulation. *See* Rep. Act No. 10963 (2017), § 87.

[52] *See infra* Part II.

is sustained, this would be an interpretation that is beneficial to the Filipino taxpayer, who is already enduring one of the highest tax rates in the region.[53] It is necessary, therefore, that the legislative history, text, and intent of the authors of the Tax Code be culled and clarified for there to be sound justification to the position that deficiency interest may not be imposed on all kinds of national internal revenue taxes, but only on income, estate, and donor's tax.

Another issue, which had been laid to rest by TRAIN but still worthy of discussion for all pending cases before the BIR and the courts, is the simultaneous imposition of both deficiency and delinquency interest. In 2012, the CTA also resolved to sanction the simultaneous imposition of both interest,[54] but this issue has not been ultimately decided by the Supreme Court, hence it remains a justiciable controversy without final guidance. It is argued in this Note that the simultaneous imposition of both deficiency and delinquency interest is sanctioned by the Tax Code, and for which there is no violation of the taxpayer's constitutional right to due process.

Related to the previous issue is the question of the reckoning date of delinquency interest. The Tax Code provides that it shall commence from the due date appearing in the notice and demand made by the Commissioner of Internal Revenue ("CIR") until full payment thereof.[55] On what constitutes the "notice and demand" by the CIR, the CTA has a spotted record in determining the reckoning point of delinquency interest, and the Supreme Court has not definitively ruled on such issue. It is contended here that such "notice and demand" pertains to the Formal Letter of Demand or Final Assessment Notice ("FLD/FAN") issued by the CIR or his duly authorized representative, and not to other assessment notices issued after the FLD/FAN. This interpretation would advance uniformity and equal treatment for taxpayers exercising the appellate procedures provided for under the Tax Code.

Lastly, the Supreme Court has upheld, in a number of related cases, an exception to the imposition of penalty interest, even though such is not provided for under the Tax Code.[56] Considering that tax exemptions are

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[53] *See* ASEAN Briefing, *Comparing Tax Rates Across ASEAN*, ASEAN BRIEFING WEBSITE, July 26, 2018 *at* https://www.aseanbriefing.com/news/2018/07/26/comparing-tax-rates-across-asean.html (last accessed May 11, 2019).

[54] *See infra* Part II.

[55] TAX CODE, § 249(C).

[56] *See infra* Part II.

construed against the taxpayer,[57] and for which interest is considered an "addition" to the tax, then the exception should likewise be read in *strictissimi juris* against the one invoking it. A narrow reading of the exemption provided by the Supreme Court is necessary so that there is no wanton invocation of such doctrine to the detriment of the government.

These different issues are discussed in *seriatim* in this Note. Part I traces the legislative history of penalty interest for purposes of national internal revenue tax cases, including an examination of its text, and a comparative review of similar penalties imposed in the United States, the originator of the country's tax laws. Part II pertains to deficiency interest, particularly on the types of taxes on which it may be imposed on, examining for the purpose the text of the Tax Code, and the jurisprudential mooring of the Tax Court. Part III explains the simultaneous imposition of both deficiency and delinquency interest and the legal justification for such. Part IV is concerned with the determination of the reckoning point for the imposition of delinquency interest, especially on how the term "notice and demand" should be construed to achieve uniformity and equal treatment among taxpayers availing of different "paths" of appeal. Part V elucidates on the exemption provided for by the Supreme Court in the imposition of interest, and advocates on a narrow reading of such exemption. Lastly, the Conclusion provides for a summary of the points raised in this Note. Illustrations are provided for better visualization of how the ideas herein are to be applied.[58]

I. BACKGROUND ON PENALTY INTEREST

Statutory construction is an art that aims to discover and expound on the meaning and intention of the authors of the law with regard to its application.[59] In interpreting the words of the law, reference may be made to both intrinsic and extrinsic aids to construction. Among these are the history, text, and the deliberations of Congress, which would help shed light to the law's import. These techniques are used in looking at the background of penalty interest in tax cases.

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[57] Sea-Land Serv., Inc. v. Ct. of Appeals, G.R. No. 122605, 357 SCRA 441, 444 (2001), *citing* Cyanamid Phil., Inc. v. Ct. of Appeals, G.R. No. 108067, 322 SCRA 639, 650 (2000). "Laws granting exemption from tax are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing power. Taxation is the rule and exemption is the exception."

[58] Assume all figures are in Philippine Peso (PHP) amounts.

[59] DANTE B. GATMAYTAN, LEGAL METHOD ESSENTIALS 2.0 214 (2014), *citing* Caltex (Phil.), Inc. v. Palomar, G.R. No. 19650, 18 SCRA 247 (1966).

A. Legislative History

The first codification of the Philippines' tax laws came with C.A. No. 466 or the National Internal Revenue Code which took effect on July 1, 1939. Under Section 51(e) thereof, the law imposed a surcharge of 5% and interest at the rate of 1% per month for any due but unpaid amounts of income tax:

> SEC. 51. *Assessment and Payment of Income Tax.*—(a) [. . .]
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> * * *
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> (e) *Surcharge and interest in case of delinquency.*—To any sum or sums due and unpaid after the dates prescribed in subsections (b), (c) and (d) for the payment of the same, there shall be added the sum of five per centum on the amount of tax unpaid and interest at the rate of one per centum a month upon said tax from the time the same became due, except from the estates of insane, deceased, or insolvent persons.

Scattered among the provisions of the NIRC of 1939 are the other civil penalties that may be sanctioned. Section 72 imposes a 50% surcharge of the amount of tax deficiency when there is willful neglect to file the income tax return, or in case of false or fraudulent return that is willfully made. However, if there is no such willful neglect to file the return, only a 25% surcharge is permitted. As for inheritance and estate taxes, the NIRC of 1939 provides for deficiency interest at the rate of 6% per annum, and a 5% surcharge on the unpaid amount, as follows:

> SEC. 100. *Interest on Deficiency.*—Interest upon the amount determined as a deficiency shall be assessed at the same time as the deficiency, shall be paid upon notice and demand from the Collector of Internal Revenue, and shall be collected as a part of the tax, at the rate of six per centum per annum from the due date of the tax to the date the deficiency is assessed.
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> SEC. 101. *Additions to the Tax in Case of Non-payment.*—(a) [. . .]
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> (c) *Surcharge.*—If any amount of the taxes included in the notice and demand from the Collector of Internal Revenue is not paid in full within thirty days after such notice and demand, there shall be collected in addition to the interest prescribed herein and in sections 99 and 100 and as part of the taxes a surcharge of five per centum of the unpaid amount.

Section 102 provides for a surcharge penalty for willful neglect to file the estate tax return, similar to Section 72. Section 119 likewise provides for deficiency surcharge and interest on donor's tax, to wit:

> SEC. 119. *Additions to the Tax in Case of Non-payment.*—
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> (a) [. . .]
>
> (b) Deficiency.
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> (1) *Payment not extended.*—Where a deficiency, or any interest assessed in connection therewith, or any addition to the taxes provided for in section 120 is not paid in full within thirty days from the date of the notice and demand from the Collector, there shall be collected as a part of the taxes, interest upon the unpaid amount at the rate of one per centum a month from the date of such notice and demand until it is paid.
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> * * *
>
> (c) *Surcharge.*—If any amount of the taxes included in the notice and demand from the Collector of Internal Revenue is not paid in full within thirty days after such notice and demand, there shall be collected in addition to the interest prescribed above and as a part of the taxes a surcharge of five per centum of the unpaid amount.

Section 120 provides for the same surcharge penalties for willful neglect to file the donor's tax return, similar to Sections 72 and 102.

On the other hand, Section 183 of the NIRC of 1939 provides for a 25% and 50% surcharge penalty for non-payment of the percentage tax on the prescribed time, and if there is filing of a fraudulent return, respectively. This scenario is also the same for payment of royalties and *ad valorem* taxes under Section 245.

It must be noted that under Section 51(e) of the NIRC of 1939, the monthly one percent interest rate is not capped. It would run until the full payment of the deficiency income tax. That is why amendatory legislation was introduced to limit the running of this interest. Republic Act ("R.A.") No. 2343, which took effect on June 20, 1959, provided for a cap in deficiency interest, as follows:

> SEC. 51. *Payment and assessment of income tax.*—(a) [. . .]
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> * * *
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> (d) *Interest on deficiency.*—Interest upon the amount determined as a deficiency shall be assessed at the same time as the deficiency and shall be paid upon notice and demand from the Commissioner of Internal Revenue; and shall be collected as a part of the tax, at the rate of six per centum per annum from the date prescribed for the payment of the tax (or, if the tax is paid in installments, from the date prescribed for the payment of the first installment) to the date the deficiency is assessed: *Provided*, That the maximum amount that may be collected as interest on deficiency shall in no case exceeded the amount corresponding to a period of three years, the present provisions regarding prescription to the contrary notwithstanding.
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> (e) *Additions to the tax in case of nonpayment.*—
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> (1) [. . .]
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> (2) *Deficiency.* Where a deficiency, or any interest assessed in connection therewith under paragraph (d) of this section, or any addition to the taxes provided for in section seventy-two of this Code is not paid in full within thirty days from the date of notice and demand from the Commissioner of Internal Revenue, there shall be collected upon the unpaid amount, as part of the tax, interest at the rate of one per centum a month from the date of such notice and demand until it is paid: *Provided*, That the maximum amount that may be collected as interest on deficiency shall in no case exceed the amount corresponding to a period of three years, the present provisions regarding prescription to the contrary notwithstanding.
>
> (3) *Surcharge.* If any amount of the tax included in the notice and demand from the Commissioner of Internal Revenue is not paid in full within thirty days after such notice and demand, there shall be collected in addition to the interest prescribed herein and in paragraph (d) above and as part of the tax a surcharge of five per centum of the amount of tax unpaid.

In sum, R.A. No. 2343 provided that the deficiency interest of 6% per annum, and the delinquency interest based on the unpaid amount of 1% per month shall both not exceed the amount corresponding to three years. This means that the maximum imposable amount of deficiency interest is 18% per annum, while for delinquency interest is 36% per annum. In the case of *Central*

Azucarera de Don Pedro v. Court of Tax Appeals,[60] the Supreme Court ruled that the deficiency interest of 6% shall be assessed at the same time as the deficiency income tax, even though the return was filed and the tax was paid before the effectivity of R.A. No. 2343. It further held that R.A. No. 2343 was not a penal law that precludes retroactive effect to the detriment of the taxpayer, but it is merely "just compensation to the state for the delay in paying the tax."[61] This holding would be affirmed by the Court in *Heald Lumber Co. v. Tabios*.[62]

Upon the concentration of both legislative and executive powers during Martial Law, amendatory legislation was later introduced by President Ferdinand Marcos. P.D. No. 69, which took effect on January 1, 1973, increased both the deficiency and delinquency interest rates to 14% per annum, but maintained the three-year cap. The next major tax reform legislation came with P.D. No. 1158, or the National Internal Revenue Code of 1977, which took effect on June 3, 1977. The new NIRC retained the rate of interest imposed by P.D. No. 69. Then came P.D. No. 1705, which took effect on August 1, 1980. It increased the rate of interest for both deficiency and delinquency to 20% per annum, again retaining the 3-year period cap. However, the most consequential legislation with respect to civil penalties came with the enactment of P.D. No. 1994, which took effect on July 3, 1986. It provided for a new Title in the Tax Code consolidating all provisions regarding penalties:

> TITLE XI - Additions to the Tax and General Penal Provisions
>
> CHAPTER I - Additions to the Tax
>
> SEC. 281. *General provisions.*—(a) The additions to the tax or deficiency tax prescribed in this Chapter shall apply to all taxes, fees and charges imposed in this Code. The amount so added to the tax shall be collected at the time, in the same manner and as part of the tax.
>
> * * *
>
> SEC. 283. *Interest.*—(a) In general. There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) per annum, or such higher rate as may be prescribed

[60] G.R. No. 23236, 20 SCRA 344 (1967).

[61] *Id.* at 353, *citing* Castro v. Collector of Internal Revenue, G.R. No. 12174, 6 SCRA 886 (1962).

[62] G.R. No. 23123, 29 SCRA 685 (1969).

> by regulations, from the date prescribed for payment until the amount is fully paid.
>
> (b) *Deficiency interest.*—Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in paragraph (a) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.
>
> (c) *Delinquency interest.*—In case of failure to pay:
>
> (1) The amount of the tax due on any return required to be filed, or
>
> (2) the amount of the tax due for which no return is required, or
>
> (3) a deficiency tax, or any surcharge or interest thereon, on the due date appearing in the notice and demand of the Commissioner there shall be assessed collected [sic], on the unpaid amount, interest at the rate prescribed in paragraph(a) hereof until the amount is fully paid, which interest shall form part of the tax.

It can be seen that this new Title introduced by P.D. No. 1994 is the precursor of the provisions of the current Tax Code pertaining to civil penalties. For the first time, all provisions on civil penalties were integrated in this new Title, to which a number of observations can be had: (1) there is a mention of the word "delinquency interest" for the first time in the Code; (2) deficiency interest makes a reference to how "deficiency" is defined in the Code; (3) the 20% rate is retained for both types of interest, now subject of increase through rules and regulations; (4) both interests are now to run until full payment, as compared to before where deficiency interest stops at the date were the assessment was made; and (5) the three-year cap has been removed. These same provisions would be substantially lifted and carried over to the current Tax Code, which the recently-enacted TRAIN Law has amended.

B. Text

It has been said that the most objective way of ascertaining intent is through the text.[63] A close scrutiny of the words of Section 249 is in order.

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[63] GATMAYTAN, *supra* note 55, at 44. "The principle behind this mode [Textualism] is that the text is the most obviously authentic embodiment of constitutional truth."

Subsection (A) of Section 249 discusses how, in general terms, interest is to be treated. It provides for the interest rate, and the general way of how to compute it. Prior to TRAIN, the rate of interest for both deficiency and delinquency interest was 20%, subject to change to a higher rate by rules and regulations. Upon the effectivity of TRAIN, this *fixed* rate somewhat became *flexible*, because the statute has delegated to the BSP the function of determining the new rate to be applied. Under TRAIN, the new rate of interest is double the legal rate for loans and forbearance of money, which is pegged at 6%.[64] Under Subsection (A), TRAIN likewise added a proviso which expressly prohibited the simultaneous imposition of deficiency and delinquency interest, as discussed hereafter. Subsection (A) provides for the general treatment of interest, computed from the date prescribed for payment (starting point) until the full payment thereof (endpoint), computed as follows:

$$\textit{Interest Due} = \textit{Basic Tax} \times 12\% \times \frac{DFP - DPP}{365\ days}$$

where DFP = date of full payment (endpoint)
DPP = date prescribed for payment (starting point)

Some argue that the computation of interest should use 12 months, as the interest rate is pegged on a per annum basis, and under jurisprudence, a year constitutes 12 months.[65] However, for purposes of this Note, interest computation is viewed as substantially different from how legal periods are determined, and shall use 365 days in accordance with BIR calculations as found in the illustrations in the regulations,[66] and as applied by the CTA.[67] The interpretations of the BIR, as the administrative agency in charge of enforcing the country's tax laws, are given great weight, and shall be

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[64] BSP Circ. No. 799 (2013). Rate of interest in the absence of stipulation.

[65] REV. ADM. CODE, bk. 1, § 31. *See* Commissioner of Internal Revenue v. Primetown Prop. Grp., Inc., G.R. No. 162155, 531 SCRA 436 (2007).

[66] *See* Revenue Reg. Nos. 18-2013, 21-2018.

[67] *See, e.g.*, Heavenly Urban Chef, Inc. v. Comm'r of Internal Revenue, CTA EB No. 1586 (Ct. of Tax Appeals Apr. 15, 2019); AGM Packaging System Ltd. Corp. v. Commissioner of Internal Revenue, CTA EB No. 1734 (Ct. of Tax Appeals Mar. 29, 2019); Comm'r of Internal Revenue v. Parity Packaging Corp., CTA EB No. 1783 (Ct. of Tax Appeals Mar. 5, 2019); Commissioner of Internal Revenue v. Viricson Corp., CTA EB No. 1647 (Ct. of Tax Appeals Mar. 4, 2019); Maple Sales, Inc. v. Comm'r of Internal Revenue, CTA EB No. 1662 (Ct. of Tax Appeals Feb. 21, 2019); Commissioner of Internal Revenue v. Mt. Blanc Motors, Inc., CTA EB No. 1667 (Ct. of Tax Appeals Jan. 7, 2019); Commissioner of Internal Revenue v. Hoya Glass Disk Phils., Inc., CTA EB No. 1473 (Ct. of Tax Appeals Nov. 15, 2018); Commissioner of Internal Revenue v. Cruz, CTA EB No. 1646 (Ct. of Tax Appeals Nov. 13, 2018).

considered valid and binding unless declared otherwise. However, it is admitted that this may be a legal issue that is yet to be touched on and resolved by the courts.

> *Illustration 1.1*: Mr. A was assessed of deficiency income tax in the amount of PHP 100,000.00. The prescribed date for payment appearing on the assessment is June 1, 2019. However, Mr. A was only able to pay on December 1, 2019. The total amount due, sans surcharge, on such date is as follows:

Basic Tax Due	PHP	100,000.00
Add: Interest (12%)		
6.1.2019 to 12.1.2019		
(100,000.00 x 12% x 184/365)		6,049.32
Total Due, December 1, 2019	PHP	106,049.32

Subsection (B) specifically deals with deficiency interest. Under this provision, deficiency should be construed "as the term is defined in [the] Code." There is a statutory directive to look into the definition of "deficiency" in the other provisions of the Tax Code, and a perusal of said Code would reveal that only in the context of income, estate, and donor's tax is the term defined. As will be discussed hereafter, this means that deficiency interest is only imposable on such taxes, to the exclusion of any other. This is supported by the legislative history of the Tax Code, which shows that interest on deficiency has only been imposed on income, estate, and donor's tax. Subsection (B) also provides that interest shall start from the date prescribed from the payment of the tax (starting point), and shall end in either two endpoints: (1) until full payment of the tax; or (2) until issuance by the CIR of a notice and demand, whichever comes earlier. This provision effectively precludes the simultaneous imposition of deficiency and delinquency interest, precisely because the latter only starts upon the notice and demand by the CIR.

> *Illustration 1.2*: Ms. B was assessed of deficiency donor's tax in the amount of PHP 500,000.00. The gift was completed on May 1, 2019, and the deadline for filing the return is on May 31, 2019. The notice and demand by the CIR prescribed the payment on December 1, 2019. The total amount due on such date is as follows:

Basic Tax Due	PHP	500,000.00
Add: Surcharge (25%)		125,000.00
Interest (12%)		
6.1.2019 to 12.1.2019		
(500,000.00 x 12% x 184/365)		30,246.58

Total Due, December 1, 2019	PHP	655,246.58

Illustration 1.3: From the preceding illustration, if Ms. B paid the deficiency donor's tax on September 15, 2019, the total amount due, sans surcharge, on such date is as follows:

Basic Tax Due	PHP	500,000.00
Add: Surcharge (25%)		125,000.00
Interest (12%)		
6.1.2019 to 9.15.2019		
(500,000.00 x 12% x 107/365)		17,589.04
Total Due, September 15, 2019	PHP	642,589.04

On the other hand, Subsection (C) discusses how delinquency interest is to be imposed. There are three grounds that would trigger the imposition of delinquency interest; it would arise in case there is failure on the part of the taxpayer to pay: (1) the amount of the tax due on any return to be filed; or (2) the amount of the tax due for which no return is required; or (3) a deficiency tax, or any surcharge or interest thereon. The Subsection likewise provides that delinquency interest should commence from the due date appearing in the notice and demand by the CIR (starting point) until the full payment of the unpaid amount (endpoint). At which amount is delinquency interest then imposed—on the tax due only or on the unpaid balance of the tax, including surcharge and deficiency interest? The Subsection provides that delinquency interest is to be assessed and collected on the "unpaid amount," and not merely on the unpaid tax. This "unpaid amount" would necessarily refer not just to the basic tax, but likewise to the surcharge and deficiency interest.

Delinquency, which is not defined anywhere in the Tax Code, is used in its general meaning as something that is not paid when the prescribed period has come. Upon the lapse of the deadline as found in the notice and demand by the CIR, the delinquent amount therefor would necessarily include the unpaid surcharge and deficiency interest. These amounts, as additions to the tax, remain unpaid and delinquent, which would subject them to interest. The question of whether delinquency interest compounded against deficiency interest is just and reasonable could not be solved by the text of the law. However, as will be discussed hereafter, such compounding and simultaneous imposition is only in keeping with the mandate of the law, which is clear and unambiguous, and for anyone to temper such mandate would woo constitutional questions regarding separation of powers.

Illustration 1.4: Corporation C filed its income tax return for 2019 on April 10, 2020. Thereafter, it was assessed of deficiency

income tax for 2019 in the amount of PHP 1,000,000.00. The due date appearing in the notice and demand of the CIR is August 15, 2020. However, Corporation C was only able to pay on December 15, 2020. The total amount due on such date is as follows:

Basic Tax Due	PHP	1,000,000.00
Add: Surcharge (25%)		250,000.00
Deficiency Interest (12%)		
4.16.2020 to 8.15.2020		
(1,000,000.00 x 12% x 122/365)		40,109.59
Total Due, August 15, 2020	PHP	1,290,109.59
Add: Deficiency Interest (12%)		
8.16.2020 to 12.15.2020		
(1,000,000.00 x 12% x 121/365)		39,780.82
Delinquency Interest (12%)		
8.16.2020 to 12.15.2020		
(1,290,109.59 x 12% x 121/365)		51,321.62
Total Amount Due, December 15, 2020	PHP	1,381,212.03

C. Comparative Practice

The origin of the country's current Tax Code started with the Internal Revenue Law of 1904,[68] which was enacted by the then-Philippine Commission, and patterned after the tax laws of the United States. Under the current U.S. Internal Revenue Code, interest is generally imposable on any unpaid tax from the due date of the return until the date of payment in full.[69] Interest is determined quarterly by the U.S. Internal Revenue Service ("IRS"), which is the counterpart of the Philippine BIR, and is pegged at the federal short-term rate plus three percent.[70] Currently, it is pegged at 6% for underpayments of tax, and 8% for large corporate underpayments.[71] This

[68] Act No. 1189 (1904).

[69] 26 I.R.C. § 6601(a). "If any amount of tax imposed by this title [...] is not paid on or before the last date prescribed for payment, interest on such amount at the underpayment rate established under section 6621 shall be paid for the period from such last date to the date paid."

As to when the "last date prescribed for payment" is, *see* 26 I.R.C. § 6151(a). "Except as otherwise provided in this subchapter, when a return of tax is required under this title or regulations, the person required to make such return shall, without assessment or notice and demand from the Secretary, pay such tax to the internal revenue officer with whom the return is filed, and shall pay such tax at the time and place fixed for filing the return (determined without regard to any extension of time for filing the return)." Simply, this means that the prescribed date of payment is the due date of the filing of the return.

[70] 26 I.R.C. § 6621.

[71] Internal Revenue Service, *Interest rates remain the same for the second quarter of 2019*, INTERNAL REVENUE SERVICE WEBSITE, *at* https://www.irs.gov/newsroom/interest-rates-remain-the-same-for-the-second-quarter-of-2019 (last accessed May 28, 2019).

interest in underpayment of the tax is similar to deficiency interest. The difference with the Philippine Tax Code is that the interest rate is pegged by law at double the legal interest for loans and forbearance of money, which is determined by the Philippines' central monetary authority, the BSP, and not the tax enforcement agency or the BIR.

The IRS also levies a "failure-to-file" penalty, which is usually 5% of the tax owed for each month, or part of a month that the return is late, up to a maximum of 25%.[72] There is also a "failure-to-pay" penalty at one-half of one percent (0.5%) for each month, or part of a month, up to a maximum of 25%, of the amount of tax that remains unpaid from the due date of the return until the tax is paid in full.[73] This last penalty is similar to delinquency interest.

The U.S. Supreme Court has held that civil penalties were instituted for the efficient administration of the tax system. "Congress' purpose in the prescribed civil penalty was to ensure timely filing of tax returns to the end that tax liability will be ascertained and paid promptly."[74] It can be said, therefore, that similar to the principle held by the Philippine Supreme Court, interest imposed on erring taxpayers is not primarily penal in nature. But aside from the basic principles, there is a wide divergence in how penalties are applied in the two jurisdictions.

II. DEFICIENCY INTEREST IMPOSABLE ONLY ON CERTAIN NATIONAL INTERNAL REVENUE TAXES

A. Textual Basis

Section 249(B) of the Tax Code begins with the term "deficiency." It mandates that interest, as prescribed in the preceding subsection, shall be imposed on any such "deficiency" in the tax due. This is a straightforward instruction to the BIR and the courts on where to apply interest. The provision also provides the reckoning point on when deficiency interest starts, which is the date prescribed by law or regulations for its payment, and ends on either two of the following instances, whichever comes earlier: (1) upon full payment of the tax due and the concomitant additions to it; or (2) upon issuance of a notice and demand by the CIR.

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[72] 26 I.R.C. § 6651(a)(1).

[73] 26 I.R.C. § 6651(a)(2).

[74] United States v. Boyle, 469 U.S. 241, 245 (1985).

The reckoning point of deficiency interest is on the date prescribed for the payment of the tax. For example, a corporation is required to file its Final Adjustment Return ("FAR") or Annual Income Tax Return on April 15 following the close of the taxable year.[75] If such corporation was assessed of deficiency income taxes for that taxable year, and deficiency interest is applicable, then the running of said interest commences on April 16. Every taxpayer should thus be mindful of the deadlines of when the respective tax is due.

TRAIN introduced an amendment to the original provision on deficiency interest by adding the proviso, "or upon issuance of a notice and demand by the Commissioner of Internal Revenue, whichever comes earlier," in the last part of the Section. As will be discussed hereafter, this phrase would effectively preclude the simultaneous imposition of deficiency and delinquency interest, alongside with the amendment which expressly prohibited it.

> *Illustration 2.1*: Mr. X was assessed by the CIR of deficiency income taxes for taxable year 2018 in the amount of PHP 1,000,000.00, exclusive of surcharge and interest. The due date for the payment of the tax appearing on the assessment is on June 30, 2020, for which Mr. X was able to pay on said date. The tax due, with surcharge and deficiency interest, is as follows:

Basic Tax Due		PHP 1,000,000.00
Add: 25% surcharge	PHP 250,000.00	
12% deficiency interest		
4.16.2019 to 6.30.2020	145,315.07	345,315.07
Total amount due, 6.30.2020		PHP 1,345,315.07

However, a close examination of the text is necessary to divine the true intent of the authors of the law in determining the scope and application of deficiency interest. It is imperative to look back.

Section 249(B), as discussed, begins with the term "deficiency." It is crucial therefore to define the term, and the *verba legis* rule of statutory construction first comes to mind. This rule provides that, "[w]here the words of a statute are clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation."[76] Deficiency, in its

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[75] TAX CODE, § 76.

[76] Commissioner of Internal Revenue v. Central Luzon Drug Corp., G.R. No. 159647, 456 SCRA 414, 443 (2005).

plain meaning, refers to a "lack, shortage, or insufficiency."[77] A *tax deficiency*, therefore, is any "shortfall in paying taxes."[78] From its literal acceptation, a tax deficiency arises when one pays a less amount of tax due from him; it is the difference when the tax due is greater than the tax paid.

However, it has likewise been pointed out in jurisprudence, that *verba legis* is not without exceptions. "The basic canon of statutory interpretation is that the word used in the law must be given its ordinary meaning, unless a contrary intent is manifest from the law itself."[79] In the case of *Krivenko v. Register of Deeds*,[80] the Supreme Court reasoned that a term which possesses a technical meaning should be read in accordance with such meaning:

> Where words have been long used in a technical sense and have been judicially construed to have a certain meaning, and have been adopted by the legislature as having a certain meaning prior to a particular statute in which they are used, the rule of construction requires that the words used in such statute should be construed according to the sense in which they have been so previously used, although the sense may vary from strict literal meaning of the words.[81]

Therefore, the pivotal question to ask is whether the term "deficiency" appearing in Section 249(B) of the Tax Code possesses a technical meaning. It is argued that it has. The answer lies in the provision itself. Section 249(B) actually makes *reference* on how to define the term "deficiency"; the provision mandates the reader to examine it "as the term is defined in this Code." The Tax Code itself provides for guidance on how "deficiency" is to be defined, and that is by looking at the definition provided in the other provisions of the Code. Thus, there is a technical meaning to the word "deficiency," which precludes the use of its plain meaning, and this may be culled from the definition provided for in the Tax Code itself.

How then does the Tax Code define "deficiency"? A quick search results in 33 mentions of the term spread throughout the Code. However, where it matters is found in Sections 56(B), 93, and 104. It is only in these Sections that the term "deficiency" is provided with a definition.

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[77] *Supra* note 36, at 487.

[78] *Id.*

[79] Philippine Consumers Found., Inc. v. Nat'l Telecomm. Comm'n, G.R. No. 63318, 131 SCRA 200, 212 (1984).

[80] 79 Phil. 461 (1947).

[81] *Id.* at 470.

Section 56(B) is captioned "Payment and Assessment of Income Tax for Individuals and Corporations." The Section provides for the procedure on how income tax is to be paid by individual and corporate taxpayers, including installment payments and payments of capital gains tax. It provides:

> SEC. 56. *Payment and Assessment of Income Tax for Individuals and Corporations.*—
>
> (A) *Payment of Tax.*—
>
> * * *
>
> (B) *Assessment and Payment of Deficiency Tax.*—After the return is filed, the Commissioner shall examine it and assess the correct amount of the tax. The tax or deficiency income tax so discovered shall be paid upon notice and demand from the Commissioner.
>
> As used in this Chapter, in respect of a tax imposed by this Title, the term '*deficiency*' means:
>
> (1) The amount by which the tax imposed by this Title exceeds the amount shown as the tax by the taxpayer upon his return; but the amount so shown on the return shall be increased by the amounts previously assessed (or collected without assessment) as a deficiency, and decreased by the amount previously abated, credited, returned or otherwise repaid in respect of such tax; or
>
> (2) If no amount is shown as the tax by the taxpayer upon this return, or if no return is made by the taxpayer, then the amount by which the tax exceeds the amounts previously assessed (or collected without assessment) as a deficiency; but such amounts previously assessed or collected without assessment shall first be decreased by the amounts previously abated, credited returned or otherwise repaid in respect of such tax.

"Deficiency", in the context of Section 56(B), only pertains to the tax imposed in the Title to which Section 56(B) belongs to, which is Title II of the NIRC of 1997 entitled "Tax on Income."

On the other hand, Section 93 of the Tax Code states:

> SEC. 93. *Definition of Deficiency.*—As used in this Chapter, the term '*deficiency*' means:
>
> (a) The amount by which the tax imposed by this Chapter exceeds the amount shown as the tax by the executor, administrator or any of the heirs upon his return; but the amounts so shown on

> the return shall first be increased by the amounts previously assessed (or collected without assessment) as a deficiency and decreased by the amount previously abated, refunded or otherwise repaid in respect of such tax; or
>
> (b) If no amount is shown as the tax by the executor, administrator or any of the heirs upon his return, or if no return is made by the executor, administrator, or any heir, then the amount by which the tax exceeds the amounts previously assessed (or collected without assessment) as a deficiency; but such amounts previously assessed or collected without assessment shall first be decreased by the amounts previously abated, refunded or otherwise repaid in respect of such tax.

Under Section 93, "deficiency" is defined in the context of the tax imposed in the Chapter to which Section 93 belongs to, which is the estate tax. The last important provision is Section 104, which states:

> SEC. 104. *Definitions*.—For purposes of this Title, [. . .]
>
> * * *
>
> The term '*deficiency*' means:
>
> (a) the amount by which tax imposed by this Chapter exceeds the amount shown as the tax by the donor upon his return; but the amount so shown on the return shall first be increased by the amount previously assessed (or collected without assessment) as a deficiency, and decreased by the amounts previously abated, refunded or otherwise repaid in respect of such tax, or
>
> (b) if no amount is shown as the tax by the donor, then the amount by which the tax exceeds the amounts previously assessed, (or collected without assessment) as a deficiency, but such amounts previously assessed, or collected without assessment, shall first be decreased by the amount previously abated, refunded or otherwise repaid in respect of such tax.

Section 104 talks of "deficiency" in the context of donor's tax. In sum, the Tax Code only provides for a definition of "deficiency" when it is in the context of income, estate, and donor's tax. To confirm, the provisions of the statute pertaining to value-added tax ("VAT"), other percentage tax, excise tax, and documentary stamp tax ("DST") were also examined, but it shows that they do not have any provision analogous to those cited above.

Even the legislative history of the Tax Code, as discussed above, would show that deficiency interest has always been imposed only on income, estate, and donor's tax. No provision prior to P.D. No. 1994 imposed any deficiency interest on taxes other than those enumerated. With the introduction of the separate title on additions to the tax under P.D. No. 1994, as embodied in the current Tax Code, deficiency has always referred to those taxes.

B. Jurisprudential Basis

In spite of the instruction of Section 249(B) to look into the other provisions of the Tax Code to ascertain the definition of the term "deficiency," the current rule remains that deficiency interest is imposed on *all* types of national internal revenue taxes, *i.e.*, income, estate, donor's, value-added, percentage, excise, documentary stamp, and withholding tax. This is based on the reasoning of the CTA in the 2012 case of *Takenaka Corp.-Phil. Branch v. Commissioner of Internal Revenue*.[82] Here, the CTA *En Banc* held:

> [*D*]*eficiency interest* is imposed upon any tax that is still due and unpaid to the government. Such interest is imposed by the fact that a portion of the tax imposed by law, which is the "deficiency tax", is still withheld by the taxpayer. Otherwise stated, it is imposed on the amount short of the full tax due and should be paid to the government, which is the deficiency tax.[83]

The ruling was affirmed in the case of *Commissioner of Internal Revenue v. Phil. Tobacco Flue-curing & Redrying Corp.*,[84] where the CTA *En Banc* elucidated further on its justification to impose deficiency tax on *all* types of taxes under the NIRC of 1997. It held that Section 247(A) of the Tax Code states that the additions to the tax, which includes deficiency interest, applies to "all taxes, fees and charges imposed in [the] Code." Moreover, the decision relied on the discussion of the 1995 Supreme Court case of *Paper Industries Corp. of the Phil. v. Court of Appeals* or the *PICOP* case,[85] where the Tax Court held that the missing definition of "deficiency" in the other types of tax aside from income, estate, and donor's, was cured by the introduction of Section 247(A). However, this position is not shared by all Justices of the Tax Court. In the Concurring and Dissenting Opinion of Presiding Justice Roman Del Rosario,

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[82] [Hereinafter "Takenaka"], CTA EB No. 745 (Ct. of Tax Appeals Sept. 4, 2012).

[83] *Id.*

[84] [Hereinafter "Phil. Tobacco"], CTA EB No. 1218 (Ct. of Tax Appeals Apr. 11, 2016).

[85] [Hereinafter "PICOP"], G.R. No. 106949, 250 SCRA 434 (1995).

it was advanced that *PICOP* cannot be relied as precedent on the matter since the discussion thereof concerning interest was not at issue:

> *PICOP* cannot be relied upon to justify the imposition of deficiency interest on petitioner's excise tax liability. *PICOP* did not state nor resolve the issue whether or not the deficiency interest provided for in Section 249 (B) of the NIRC of 1997, as amended, may be imposed on tax other than donor's, estate, and income taxes. Thus, not having been resolved therein, PICOP cannot be considered as a doctrine on the matter. [. . .]
>
> * * *
>
> [T]he Supreme Court in *PICOP* declared that the present provision of the NIRC mentions that additions on tax applies to all taxes. While such pronouncement may not be construed beyond the context in which it was made, *PICOP* simply confirmed that in general, certain penalties and charges are applicable to all types of tax or deficiency tax; *PICOP*, however, did not categorically construe the provision of Section 249 (B) that deals with "deficiency interest" on the type of tax "as defined in [the] Code."[86]

In the Decision on the case of *Liquigaz Phil. Corp. v. Commissioner of Internal Revenue*,[87] which was penned by Justice Erlinda Uy, the CTA somewhat reversed course when it ruled that the deficiency interest on the assessment for VAT, expanded withholding tax, and withholding tax on compensation should be deleted, and only the deficiency interest on income tax should be sustained. It reasoned that the term "deficiency" is only defined by the Tax Code in the context of income, estate, and donor's tax. However, in the subsequent Amended Decision of the case,[88] the Tax Court made another U-turn and reverted to its original ruling in *Phil. Tobacco*. Presiding Justice Del Rosario maintained his view that the application of deficiency interest is limited to income, estate, and donor's tax. He was joined by the *ponente* of the case's original decision, Justice Uy, who likewise reasoned that "deficiency" is defined only in the context of income, estate, and donor's tax:

> [T]he "Deficiency Interest" shall be imposed on "[a]ny deficiency in the tax due, as the term is defined in this Code", *i.e.*, as the term "deficiency" is defined in the NIRC of 1997. Relative thereto, an examination of the said Code discloses that there are only three (3) instances where it defines the term "deficiency", and this relates

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[86] *Phil. Tobacco*, (Del Rosario, *P.J.*, *concurring and dissenting*), at 2–4.
[87] CTA EB No. 1117 (Ct. of Tax Appeals Sept. 21, 2015).
[88] CTA EB No. 1117 (Ct. of Tax Appeals June 3, 2016).

> only and respectively to three (3) types of internal revenue taxes, namely, income tax, estate tax, and donor's tax, pursuant to Sections 56(8), 93 and 104 of the NIRC of 1997[.][89]

C. Analysis

Based on the statutory mooring of the CTA *En Banc* in *Phil. Tobacco*, deficiency interest is imposable on all types of national internal revenue taxes based on Section 247(A) of the Tax Code, which mandates that all additions to the tax, including deficiency interest, must be incorporated in "all taxes, fees and charges imposed in [the] Code." The Tax Court heavily relied in the phrase "all taxes, fees and charges imposed in [the] Code" to justify its position that deficiency interest is imposable on "all" types of taxes.

At first glance, it may be seen that there is an apparent conflict between Sections 247(A) and 249(B) of the Tax Code; the former implying that deficiency interest applies to all types of taxes, while the latter only to limited types to where there is a definition of the word "deficiency." It is quite easy to resolve the issue based on the standard rules of statutory construction: the special law prevails over the general law regarding the same subject matter.[90] Of the two provisions, it is not difficult to discern which is which. Section 247(A) is captioned "General Provisions," while Section 249(B) is entitled "Deficiency Interest." Moreover, the former discusses "additions to the tax" in a broad fashion—how its application is generally treated, while the latter specifically and specially pertains to the imposition of deficiency interest. If the provisions of the law were to be harmonized and not interpreted severally,[91] the conclusion that can be easily reached is that Section 247(A), being the general law, applies to all additions to the tax. The exception is on deficiency interest, where it can only be imposed on any "deficiency" where it is defined in the Tax Code, particularly on income, estate, and donor's tax.

The majority opinion in *Phil. Tobacco* also makes reference to the *PICOP* case to justify its position. It is therefore necessary for its close scrutiny.

In *PICOP*, the taxpayer was assessed of deficiency "transaction tax" at the rate of 35% of the gross amount of interest earned on every commercial

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[89] *Id.* (Uy, *J., concurring and dissenting*), at 2–3.

[90] Vinzons-Chato v. Fortune Tobacco Corp., G.R. No. 141309, 525 SCRA 11, 21 (2007).

[91] *Id.* at 20–21. "A general law and a special law on the same subject are statutes in *pari materia* and should, accordingly, be read together and harmonized, if possible, with a view to giving effect to both."

paper issued in the primary market as principal instrument.[92] The Supreme Court ruled that the CIR and CTA were correct in assessing the taxpayer of said tax even though it is a Board of Investments (BOI)-registered enterprise which enjoys tax exemption, sans income tax,[93] since the transaction tax is, though grouped with the provisions on business tax, in reality an income tax.[94] The more material issue relevant to the discussion is whether or not the taxpayer was liable for interest and surcharge on the unpaid transaction tax. The Court ruled that it is not, for the following reasons: *first*, R.R. No. 7-77 which was relied by the CIR in imposing deficiency interest on the unpaid transaction tax was without force and effect since the NIRC of 1977 does not confer rulemaking authority to the Secretary of Finance with respect to the imposition of administrative or civil penalties; *second*, Sections 51(c)(1), (e)(1), and (3) of the NIRC of 1977 only authorized the imposition of deficiency interest on the "tax imposed by this Title," which pertained to income tax, while Section 210(b) imposing the transaction tax is grouped within the Title on "Taxes on Business"; and *third*, to support the second view, the Court reasoned that the lacuna created by the inadvertent error in missing out the application of deficiency interest on the transaction tax was cured with the introduction of Section 247(A) which stated that all additions to the tax is to apply to "all taxes, fees and charges imposed in th[e] Code."

As much as *stare decisis* is to be observed, it is apparent that *PICOP* is not the precedent that lays down the doctrine relevant to this issue. It is clear that the Supreme Court, in discussing the applicability of deficiency interest to the transaction tax, only made mention of Section 247(A) as a support for its position that the applicable law at that time, the NIRC of 1977, did not impose a deficiency interest on the transaction tax. The Court only cited Section 247(A) to "reinforce" its conclusion that the provision on civil penalties now embraces "all" taxes under the Tax Code.

But this is a myopic invocation of *PICOP*. It must be remembered that the primary issue in said case was whether or not the taxpayer is liable for interest and surcharge on the unpaid transaction tax. That said transaction tax is nowhere to be found in the current Tax Code. *PICOP* was decided in 1995 under the aegis of the NIRC of 1977. The doctrine of *stare decisis* operates as a bar for the re-litigation of an issue which is brought by similarly situated parties concerning the same questions and relating to the same event as the

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[92] Pres. Dec. No. 1154 (1977), § 1.

[93] Rep. Act No. 5186 (1967), § 8. The Investment Incentives Act.

[94] *See* Western Minolco Corp. v. Comm'r of Internal Revenue, G.R. No. 61632, 124 SCRA 121 (1983); Marinduque Mining & Indus. Corp. v. Comm'r of Internal Revenue, G.R. No. 60419, 137 SCRA 88 (1985).

previously decided case.[95] There is no similarity of the issues raised simply because the transaction tax is not anymore present in the current Tax Code. Moreover, the governing law of *PICOP* was the NIRC of 1977, which provisions are now vastly different from the current Tax Code. On these alone, it is not difficult to state the inapplicability of the *PICOP* case.

It is also noted that what the Supreme Court said in *PICOP* regarding Section 247(A) is merely an aside. The Court ruled that no deficiency interest is imposable on transaction tax because the provisions on deficiency interest only pertained to "tax imposed by this Title", which refers to income tax, while the transaction tax belonged to the Title on business taxes. Simply, the Court applied a textual construction, similar to what has been advanced in this Note, on the provisions on deficiency interest. This is the holding that wields jurisprudential value. What the Court discussed thereafter, which includes the portion invoked by the majority in *Phil. Tobacco*, is clearly an opinion "uttered by the way."[96] To even venture on the assumption that the sloppiness of the authors of the law, for which the Court in *PICOP* attributed to "inadvertent error in legislative draftsmanship,"[97] supports the view that such discussion is not necessary for the resolution of the case.[98]

Even if it were to be believed that the legislative lacuna in the NIRC of 1977 was supplied with the introduction of Section 247(A), then it is turning a blind eye to the fact that Sections 247(A) and 249(B) were part of a group of amendments that were introduced at the same time and in the same law. Section 40 of P.D. No. 1994 enacted in 1985 provided for a new Title XI in the NIRC of 1977 captioned "Additions to the Tax and General Penal Provisions." This Title included both Sections 281(a) and 283(b), which are the predecessors of Sections 247(A) and 249(B). It must be noted that Sections 247(A) and 249(B) were lifted, substantially word for word, without fail, from said Sections 281(a) and 283(b):

NIRC of 1977 (as amended by P.D. No. 1994)	*NIRC of 1997 (as amended by TRAIN)*
TITLE XI Additions to the Tax and General Penal Provisions	TITLE X Statutory Offenses and Penalties

[95] Commissioner of Internal Revenue v. Insular Life Assur. Co. Ltd., 735 Phil. 287 (2014).

[96] Reagan v. Comm'r of Internal Revenue, G.R. No. 26379, 30 SCRA 968, 977 (1969).

[97] *PICOP*, 250 SCRA 434, 454.

[98] Reagan v. Comm'r of Internal Revenue, 30 SCRA 968, 977 (1969), *citing* Uy Po v. Collector of Customs, 34 Phil. 153, 155 (1916).

CHAPTER I Additions to the Tax	CHAPTER I Additions to the Tax
Sec. 281. *General Provisions.*—(a) The additions to the tax or deficiency tax prescribed in this Chapter shall apply to all taxes, fees and charges imposed in this Code. The amount so added to the tax shall be collected at the time, in the same manner and as part of the tax.	Sec. 247. *General Provisions.*—(A) The additions to the tax prescribed in this Chapter shall apply to all taxes, fees and charges imposed in this Code. The Amount so added to the tax shall be collected at the same time, in the same manner and as part of the tax.
* * *	* * *
Sec. 283. *Interest.*—(a) *In general.* [. . .]	Sec. 249. *Interest.*—(A) *In general.* [. . .]
(b) *Deficiency interest.*—Any deficiency in the tax due, *as the term is defined in this Code*, shall be subject to the interest prescribed in paragraph (a) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof. (Emphasis supplied.)	(B) *Deficiency Interest.*—Any deficiency in the tax due, *as the term is defined in this Code*, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof, or upon issuance of a notice and demand by the Commissioner of Internal Revenue, whichever comes earlier. (Emphasis supplied.)

This only means that the introduction of Section 247(A) did not provide for a clear answer to the lacuna of the NIRC of 1977, because at the same time it introduced Section 247(A), Section 249(B) was also introduced. If it was the intention of the Legislature to categorically make the additions to the tax applicable to every and all types of national internal revenue taxes, it could have worded Section 249(B) without the phrase "as the term is defined in this Code." That would have made the application of Section 247(A) undoubtedly universal. However, that phrase which was introduced in 1985 was copied in 1997 when the present NIRC was enacted, and again sustained even in TRAIN. It is a rule in statutory construction that an amendment by the deletion of words or phrases indicates an intention to change the statutory

meaning.[99] With the retention of the phrase "as the term is defined in this Code," it can be surmised that the authors of the Tax Code continue to deem it necessary to limit the application of deficiency interest to those which has a definition under the Code.

If any value can be attributed to *PICOP*, it is the fact that textual interpretation of civil penalties is important. Even though the Supreme Court has consistently ruled that the transaction tax is considered an income tax, it still did not impose deficiency interest plainly because the provisions on deficiency interest do not refer to the transaction tax. Taking a cue from this technique, it is not difficult to conclude that deficiency interest cannot be imposed on all national internal revenue taxes because the provisions on deficiency interest refer only to income, estate, and donor's tax.

III. SIMULTANEOUS IMPOSITION OF DEFICIENCY AND DELINQUENCY INTEREST

A. Past and Current Rules

As discussed, TRAIN prohibited the simultaneous imposition of deficiency and delinquency interest, and now imposes "a more reasonable" interest rate.[100] Prior to TRAIN, there arose the question of whether deficiency and delinquency interest, two distinct and separate civil penalties sanctioned by the Tax Code, can be imposed at the same time, to the detriment of the taxpayer. Under the prior rule, deficiency and delinquency interest were set at the rate of 20%. If both types of interest are imposed simultaneously, the taxpayer is, in effect, subject to at least 40% interest rate.

If TRAIN has precluded the simultaneous imposition of deficiency and delinquency interest, what is the importance of discussing such scenario? It must be remembered that TRAIN only became effective on January 1, 2018. For cases already pending before the BIR, CTA and the Supreme Court, the applicable law is still the prior law before the enactment of TRAIN.[101] In

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[99] Obiasca v. Basallote, G.R. No. 176707, 613 SCRA 110, 129 (2010), *citing* Laguna Metts Corp. v. Caalam, G.R. No. 185220, 594 SCRA 139, 145 (2009).

[100] Chino S. Leyco, *TRAIN imposes 'reasonable' penalty on delinquents –DOF*, MANILA BULLETIN, Feb. 17, 2018, *available at* https://business.mb.com.ph/2018/02/17/train-imposes-reasonable-penalty-on-tax-delinquents-dof/ (last accessed May 19, 2019).

[101] Commissioner of Internal Revenue v. United Salvage & Towage (Phil.), Inc., G.R. No. 197515, 729 SCRA 113, 126 (2014). "In order to determine whether the requirement for a valid assessment is duly complied with, it is important to ascertain the governing law, rules

Section 6 of R.R. No. 21-2018, the BIR recognized the situation where the transaction occurred pre-TRAIN, so the applicable law was also pre-TRAIN, until December 31, 2017, when TRAIN went into full force and effect. Replicating the same illustration of the BIR in said regulations:

> *Illustration 3.1*: A Company has been assessed deficiency income tax of PHP 1,000,000.00, exclusive of interest and surcharge, for taxable year 2015. The tax liability has remained unpaid despite the lapse of June 30, 2017, the deadline for payment stated in the notice and demand issued by the Commissioner. Payment was made by the taxpayer only on February 10, 2018. The civil penalties for late payment shall be computed as follows:

Basic Tax Due	PHP	1,000,000.00
Add: Surcharge (25%)		250,000.00
Deficiency Interest (20%)		
4.16.2016 to 6.30.2017		
(1,000,000.00 x 20% x 441/365)		241,643.84
Total Due, June 30, 2017	PHP	1,350,602.74
Add: Deficiency Interest (20%)		
7.1.2017 to 12.31.2017		
(1,000,000.00 x 20% x 184/365)		100,821.92
Delinquency Interest (20%)		
7.1.2017 to 12.31.2017		
(1,350,602.74 x 20% x 184/365)		150,390.39
Delinquency Interest (12%)		
1.1.2018 to 2.10.2018		
(1,350,602.74 x 12% x 41/365)		20,106.54
Total Amount Due, September 1, 2021	PHP	1,762,962.69

B. Statutory Basis

Under the Tax Code, before the enactment of TRAIN, deficiency interest commences from the date prescribed for the payment of the tax until the full payment thereof. Delinquency interest, on the other hand, commences from the lapse of the due date appearing in the notice and demand of the CIR, until the amount is fully paid. Since the notice and demand by the CIR is always issued after the prescribed date for payment of the tax, *i.e.* an assessment is issued after examination of the return filed on the prescribed date, delinquency interest is imposed after deficiency interest. Interestingly, both types of interest run until full payment of the tax and its additions—a

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and regulations and jurisprudence at the time the assessment was issued. [...] The date of issuance of the notice of assessment determines which law applies[.]"

common endpoint for which the Code implies that they could simultaneously run parallel to each other.

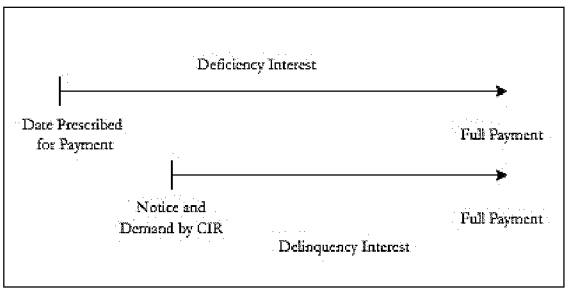

Figure 1. Diagrammatic Representation on the Simultaneous Running of Deficiency and Delinquency Interest under the NIRC of 1997 (Pre-TRAIN)

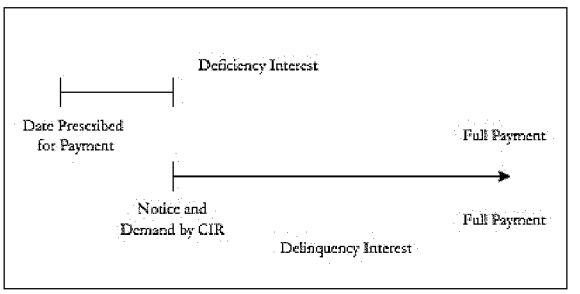

Figure 2. Diagrammatic Representation on the Running of Deficiency and Delinquency Interest under TRAIN Amendments

As to the amount of deficiency interest, such is only imposed on the amount of deficiency under Section 249(B). Any further additions to the tax are not imposed 20% interest. However, as to delinquency interest, the amount subject to 20% interest is the tax, including any additions thereto, such as the surcharge and unpaid deficiency interest at the time of notice and demand by the CIR, as provided for under Section 249(C)(3). This means that at the date of notice and demand by the CIR, the taxpayer is imposed an effective interest rate of 40%. Now the question comes—is a 40% interest rate unconscionable and excessive? In terms of contractual stipulations, the Supreme Court has capped compensatory interest at 24% per annum.[102] Is it the same for penalty interest in tax cases?

[102] *See* Garcia v. Ct. of Appeals, G.R. No. 82282, 167 SCRA 815 (1988); Bacolor v. Banco Filipino Sav. & Mortg. Bank, G.R. No. 148491, 515 SCRA 79(2007); Macalinao v. Bank of the Phil. Islands, G.R. No. 175490, 600 SCRA 67 (2009); Villanueva v. Ct. of Appeals, G.R. No. 163433, 655 SCRA 707 (2011).

In the cases imposing a 24% cap on interest, they involve private parties who undertake loan agreements. The nature of their obligations is contractual;[103] while the obligation to pay the tax is legal. Moreover, the courts are allowed to temper contractual interest rates when necessary, if found to be unconscionable.[104] If the Supreme Court adjusts the rates of deficiency and delinquency interest when the Tax Code expressly provides for such rate, it would amount to an interpretation that is not provided for by law. In fact, the right to change the interest rate is limited to raising the amount, and which does not rest with the Court, but with the Secretary of Finance who is empowered under Section 249(A) to provide for "such higher rate as may be prescribed by rules and regulations." So far, there has been no decision rendered by the Court which imposed a different interest rate than that prescribed in the Tax Code, only a complete exemption to the imposition of penalties under the "good faith" principle as will be discussed. If and when the Court does otherwise, it would be tantamount to judicial legislation.[105]

C. Jurisprudential Basis

The ruling which have solidified the pre-TRAIN practice of simultaneous imposition of deficiency and delinquency interest is the same case of *Takenaka* discussed above.

In *Takenaka*, the Tax Court was able to trace the legislative history of the provisions imposing penalty interest in the Tax Code and was able to cull the legislative intent that the authors of the law intended that both deficiency and delinquency interest was to simultaneously apply. Similar to the discussion above regarding the history of the Tax Code, the majority of the CTA *En Banc* in *Takenaka* stated:

> For emphasis, the deletion of the three-year limit imposed on the amount to be collected for both deficiency and delinquency interests coupled with the amendment on the period for assessment and collection of deficiency interest clearly reveal the legislative intent to impose deficiency and delinquency interests simultaneously until full payment of the tax due without limitation as to the amount of interest to be collected by the government.[106]

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[103] CIVIL CODE, art. 1157.

[104] State Investment House, Inc. v. Ct. of Appeals, 361 SCRA 201, 209 (2001).

[105] Silverio v. Republic, G.R. No. 174689, 537 SCRA 373, 394 (2007). "[I]t is not a license for courts to engage in judicial legislation. The duty of the courts is to apply or interpret the law, not to make or amend it."

[106] *Takenaka*, CTA EB No. 745 (Ct. of Tax Appeals Sept. 4, 2012), at 18–19.

On the issue of fairness, the Tax Court plainly stated that its hands are tied. When the law is clear and unambiguous, it is not the duty of the courts to interpret the law, but simply to apply it, reasoning that:

> It bears stressing that the first and fundamental duty of the Court is to apply the law. When the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. As has been the Supreme Court's consistent ruling , where the law speaks in clear and categorical language, there is no occasion for interpretation; there is only room for application.[107]

The lone dissent by Presiding Justice Ernesto Acosta in *Takenaka* took issue with the simultaneous imposition of deficiency and delinquency interest. He manifested that the "imposition of at least 40% per annum interest on any unpaid tax is grossly excessive and unjust."[108] Citing jurisprudence rendered by the Supreme Court and the Tax Court, he pointed out that it has always been the practice to impose one kind of interest at a time, with deficiency interest running until only the FLD/FAN, and delinquency interest to start thereat until full payment.

However, it must be noted that the cases cited by Presiding Justice Acosta did not squarely settle the issue on the simultaneous imposition of deficiency and delinquency interest. They were mere examples of the imposition of one type of interest. They could not hold, at the very least, jurisprudential value in deciding over *Takenaka*. It is actually in the principle of fairness and equity which is more compelling, but it was not fully expounded on in the dissent.

D. Contemporaneous Acts

After the promulgation of *Takenaka*, the Secretary of Finance issued R.R. No. 18-2013 dated November 28, 2013, instituting changes in how the assessment process works, and thereby amending R.R. No. 12-99 dated September 6, 1999. R.R. No. 18-2013 likewise changed the illustrations in the former regulations in how delinquency interest is to be computed, as follows:

> *Illustration 3.2*: XYZ Corporation filed a false return. It was assessed of deficiency income tax for calendar year 1997 in the amount of PHP 175,000.00. The amount remained unpaid by June 30, 1999, the deadline for payment of the assessment, and assuming further that this assessment has already become final and

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[107] *Id.* at 20.

[108] *Id.*, (Acosta, *P.J., dissenting*), at 3.

> collectible. In this case, such corporation shall be considered late in payment of the said assessment. Assuming, further, that the corporation pays its tax assessment only by July 31, 1999, the civil penalties for late payment shall be computed as follows:
>
> | | | |
> |---|---|---|
> | Basic Tax Due | PHP | 175,000.00 |
> | Add: Surcharge (50%) | | 87,500.00 |
> | Deficiency Interest (20%) | | |
> | 4.16.1998 to 6.30.1999 | | |
> | (175,000.00 x 20% x 441/365) | | 42,287.67 |
> | Total Due, June 30, 1999 | PHP | 304,787.67 |
> | Add: Deficiency Interest (20%) | | |
> | 7.1.1999 to 7.31.1999 | | |
> | (175,000.00 x 20% x 31/365) | | 2,972.60 |
> | Delinquency Interest (20%) | | |
> | 7.1.1999 to 7.31.1999 | | |
> | (304,787.67 x 20% x 31/365) | | 5,177.22 |
> | Total Amount Due, July 31, 1999 | PHP | 312,937.49 |

In essence, the BIR took cue from the CTA *En Banc* when it promulgated *Takenaka*, and now made it a standard procedure for all tax assessors. Prior to the issuance of R.R. No. 18-2013, the BIR did not impose both interests simultaneously—they imposed deficiency and delinquency interests one after the other.[109] Subsequent decisions of the Tax Court have also applied the simultaneous imposition of both interests.

It would take a legislative amendment to reverse the new practice. Noticeably, in the consolidated bills on the recent tax reform law, Senate Bill No. 1592[110] and House Bill No. 5636,[111] which are the consolidated bills on the recent tax reform law, did not contain any sections amending Section 249 of the Tax Code. It would be until the ratification of the conference committee report and as embodied in the enrolled copy of the bill that an amendment on the simultaneous imposition of penalty interest would make its way. However, even the lack of congressional deliberations on this matter would signify the recognition by the authors of the law that, prior to TRAIN, deficiency and delinquency interest may be simultaneously imposed. Verily, there are even two provisos in the TRAIN that would preclude such simultaneous imposition: (1) in Section 249(A), with the insertion of

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[109] Euney Marie Mata-Perez, *Punitive interest*, BUSINESS MIRROR, Mar. 23, 2017, *available at* https://businessmirror.com.ph/2017/03/23/punitive-interest/.

[110] S. No. 1592, 17th Cong., 2nd Sess. (2017). Tax Reform for Acceleration and Inclusion.

[111] H. No. 5636, 17th Cong., 1st Sess. (2017). Tax Reform for Acceleration and Inclusion.

"*[p]rovided*, [t]hat in no case shall the deficiency and delinquency interest prescribed under Subsections (B) and (C) hereof, be imposed simultaneously"; and (2) in Section 249(B), with the insertion of "or upon issuance of a notice and demand by the CIR, whichever comes earlier." The value of the first amendment is that it provides an express prohibition on the simultaneous imposition, while the second amendment provides for an alternative endpoint for deficiency interest—upon the notice and demand by the CIR—which is, not accidentally, the starting point for the imposition of delinquency interest.

Aside from the precedential basis afforded by *Takenaka*, these acts by the BIR, and thereafter by Congress, connote that it was really the intention of the authors of the NIRC of 1997 to have simultaneous imposition of deficiency and delinquency interest, at least up until the effectivity of TRAIN. For all assessment cases to which the pre-TRAIN NIRC of 1997 is applicable, it is proper for the simultaneous imposition to be operative.

IV. RECKONING POINT FOR THE IMPOSITION OF DELINQUENCY INTEREST

A. Background

Interest depends on a period. For interest in loan contracts, the term is usually stipulated in writing.[112] It may commence upon a date, or the happening of a condition or event. In the absence of stipulation, legal interest may still be imposed, computed from the date of default upon judicial or extrajudicial demand.[113] For deficiency and delinquency interest, reference should be made to Section 249 of the Tax Code.

Deficiency interest commences from the date prescribed for the payment of the tax due. This means that for both individual and corporate income tax, deficiency interest commences on April 16, as the last date prescribed for payment is April 15 of the succeeding calendar year.[114] As for estate tax, deficiency interest commences upon the lapse of the one year period to file the estate tax return.[115] Lastly, for donor's tax, deficiency interest starts to run upon the lapse of the 30-day period within which to file the return after the date the gift is made.[116] From the commencement of deficiency

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[112] CIVIL CODE, art. 1956.
[113] Art. 2209. *See* Garcia v. Thio, G.R. No. 154878, 518 SCRA 433, 443 (2007).
[114] TAX CODE, §§ 51(c)(1), 77(B).
[115] §§ 90(B), 91(A).
[116] § 103(B).

interest on these dates, it shall continue to run until the full payment of the tax and its additions, or upon the notice and demand made by the CIR.

Under TRAIN, delinquency interest commences upon the end of the running of deficiency interest. The prohibition on their simultaneous imposition now means that they can be imposed one at a time only. Delinquency interest therefore starts when the CIR has made a "notice and demand" to the taxpayer to pay the tax. This is in line with R.R. No. 21-2018 which implemented Section 249 of the Tax Code, in line with the amendments introduced by TRAIN. Section 5 of R.R. No. 21-2018 dated September 21, 2018, shows an illustration where the BIR computed delinquency interest starting from the lapse of the deadline for payment stated in the notice and demand issued by the CIR.

As compared to deficiency interest, delinquency interest is applicable to all national internal revenue taxes for the simple reason that the Tax Code does not confer upon the term "delinquency" a technical meaning. Delinquency, in general, refers to "[a] failure or omission; a violation of a law or duty"[117] to pay the tax on time. Hence, when the CIR has made a notice and demand for payment and when such notice bears a due date for the payment of any tax under the Tax Code, the taxpayer is deemed a delinquent, and delinquency interest is imposable, upon the lapse of such deadline.

The issue thus revolves around the interpretation of the phrase "notice and demand" by the CIR which constitutes the reckoning point for the imposition of delinquency interest. As will be discussed, this "notice and demand" pertains only to the FLD/FAN issued by the CIR or his duly authorized representative in accordance with Section 228 of the Tax Code.

However, in the Amended Decision of the case in *Commissioner of Internal Revenue v. Total (Phil.) Corp.*,[118] the CTA *En Banc* ruled that the Final Decision on Disputed Assessment ("FDDA"), not the FLD/FAN, is considered as the "notice and demand" by the CIR for purposes of computing delinquency interest. In that Amended Decision, the Tax Court ruled that the FDDA contained therein a new due date for the payment of the tax due, and that the use of such new date is beneficial to the taxpayer, citing the principle that tax laws should be interpreted in favor of the taxpayer and strictly against the government.[119]

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[117] *Supra* note 36, at 493.

[118] CTA EB No. 1616 (Ct. of Tax Appeals May 10, 2019).

[119] *Id., citing* Philacor Credit Corp. v. Comm'r of Internal Revenue, G.R. No. 169899, 690 SCRA 28, 47 (2013).

B. Analysis of the Tax Assessment Process

To understand whether "notice and demand" made by the CIR truly pertains to the FLD/FAN or FDDA, it is important to interpret Section 249 in relation to Section 228 of the Tax Code, specifically, on the procedure for protesting assessments. Section 228 reads as follows:

> 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: Provided, however, That a pre-assessment notice shall not be required in the following cases:
>
> (a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or
>
> (b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or
>
> (c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or
>
> (d) When the excise tax due on excisable articles has not been paid; or
>
> (e) When the article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.
>
> 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 one hundred eighty (180)-day period; otherwise, the decision shall become final executory and demandable.

From a cursory reading of the provision, there are at least three documents that will be issued by the CIR or his duly authorized representative with regard to the whole assessment process, namely: (1) a pre-assessment notice; (2) an assessment based on the CIR's findings; and (3) the decision on the assessment duly protested by the taxpayer. In the parlance used by the BIR, these pertain to the: (1) Preliminary Assessment Notice (PAN); (2) Formal Letter of Demand and Final Assessment Notice (FLD/FAN); and (3) Final Decision on Disputed Assessment (FDDA), respectively.

Section 3.1.2 of R.R. No. 12-99 dated September 6, 1999, as amended by R.R. No. 18-2013 dated November 28, 2013, and R.R. No. 7-2018 dated January 22, 2018, provides for the governing rules on the issuance of the PAN, as follows:

> 3.1.2 *Preliminary Assessment Notice (PAN).*—If after review and evaluation 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 a Preliminary Assessment Notice (PAN) for the proposed assessment. It shall show in detail the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based[.]
>
> 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 Final Assessment Notice (FLD/FAN) shall be issued by calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

> If the taxpayer, within fifteen (15) days from date of receipt of the PAN, responds that he/it disagrees with the findings of deficiency tax or taxes, an FLD/FAN shall be issued within fifteen (15) days from filing/submission of the taxpayer's response, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

When the taxpayer fails to respond to the PAN, or in case of denial by the CIR of taxpayer's response, the FLD/FAN shall be then be issued. Section 3.1.4 of RR No. 12-99 defines the FLD/FAN, as follows:

> 3.1.4 *Formal Letter of Demand and Final Assessment Notice (FLD/FAN).*—The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. The FLD/FAN 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[.]

As compared to the PAN, the FLD/FAN is described under the regulations as the letter of demand "calling for payment of the taxpayer's deficiency tax or taxes." It is therefore clear under the rules that the FLD/FAN constitutes as the "notice and demand" made by the CIR or his duly authorized representative. The PAN, on the other hand, does not yet call for the payment of deficiency taxes, as it is only, in the words of Section 3.1.2 of RR No. 12-99, "the proposed assessment" showing in detail "the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based." Thus, the PAN only sets out the proposed assessment that would lead to the eventual issuance of the FLD/FAN.

The difference between the PAN and the FLD/FAN is elucidated by the Supreme Court in *Commissioner of Internal Revenue v. Fitness by Design, Inc.*:[120]

> A pre-assessment notice "do[es] not bear the gravity of a formal assessment notice." A pre-assessment notice merely gives a tip regarding the Bureau of Internal Revenue's findings against a taxpayer for an informal conference or a clarificatory meeting.
>
> *A final assessment is a notice "to the effect that the amount therein stated is due as tax and a demand for payment thereof." This demand for payment* signals the time "when penalties and interests begin to accrue

[120] Hereinafter "*Fitness by Design*", G.R. No. 215957, 808 SCRA 422 (2016).

> against the taxpayer and enabling the latter to determine his remedies[.]" Thus, it must be "sent to and received by the taxpayer, and must demand payment of the taxes described therein within a specific period."[121]

It must be noted that the FLD/FAN is the first notice of assessment that calls for the payment of the tax due that the CIR issues to the taxpayer. As held in the case of *Adamson v. Ct. of Appeals*,[122] the Supreme Court characterized the FLD/FAN, *viz.*:

> In the context in which it is used in the NIRC, *an assessment is a written notice and demand made by the BIR on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed.* A written communication containing a computation by a revenue officer of the tax liability of a taxpayer and giving him an opportunity to contest or disprove the BIR examiner's findings is not an assessment since it is yet indefinite.[123]

It is therefore clear and unambiguous under the rules interpreting the provisions of the NIRC of 1997, as well as the jurisprudence on the matter, that the FLD/FAN constitutes the "notice and demand" issued by the CIR.

However, in *Total*, the CTA *En Banc* ruled that the FDDA, not the FLD/FAN, is considered as the "notice and demand" for purposes of computing delinquency interest. This interpretation is contrary to the definition of the FLD/FAN. The FDDA, even though it may fix a new due date for the payment of the tax liabilities and surcharge of the taxpayer taking into consideration the protest filed, still does not constitute the first "notice and demand" issued by CIR. Section 3.1.6 of RR No. 12-99, as amended, defines the FDDA, as follows:

> 3.1.6 *Final Decision on Disputed Assessment (FDDA).*—The decision of the Commissioner or his duly authorized representative shall (i) state the facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based, otherwise, the decision shall be void [...], in which case, the same shall not be considered a decision on a disputed assessment, and (ii) that the same is his final decision.

The definition of the FDDA cited above does not say that it constitutes as the "notice and demand" by the CIR, precisely because such

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[121] *Id.* at 447–48. (Emphasis supplied.)
[122] G.R. No. 120935, 588 SCRA 27 (2009).
[123] *Id.* at 44.

"notice and demand" has already been issued in the form of the FLD/FAN. The FDDA would only amplify, reiterate, modify or repeal the disquisitions made in the FLD/FAN. As such, it contains the same averments in the FLD/FAN, and the FDDA would not, in any way, contain new assessments for deficiency taxes not made subject of the audit for which the FLD/FAN was issued. This means that the FDDA is sourced from the FLD/FAN, which is considered the first "notice and demand" issued by the CIR. Thus, the FLD/FAN is the reckoning point for the imposition of penalty interest. Citing again the case of *Fitness by Design*:

> A final assessment is a notice "to the effect that the amount therein stated is due as tax and a demand for payment thereof." *This demand for payment signals the time "when penalties and interests begin to accrue against the taxpayer* and enabling the latter to determine his remedies[.]"[124]

Under Section 3.1.5 of R.R. No. 12-99, if a protest is denied by the CIR's authorized representative, the taxpayer may elevate his protest through a request for reconsideration to the CIR within 30 days from date of receipt of the decision. Denial of the administrative appeal is contained in the decision of the CIR, which may be appealed to the CTA within 30 days from date of receipt thereof. This decision of the CIR on the administrative appeal is likewise termed as the FDDA. Hence, any and all decisions rendered after the FLD/FAN is not the "notice and demand" contemplated by the Tax Code.

C. Fairness and Equity

The imposition of delinquency interest on the due date appearing in the assessment notice attached to the FDDA would likewise bring inequity on the part of the taxpayer who has validly protested the FLD/FAN issued by the CIR or his duly authorized representative.

When the CIR issues the FDDA within the 180-day period prescribed under Section 228 of the Tax Code, the taxpayer has recourse to appeal said decision to the CTA within 30 days from receipt thereof. However, when there is inaction on the part of the CIR or his duly authorized representative to resolve the protest filed, there are two options available to the taxpayer: (1) to file a petition for review before the CTA within 30 days after the expiration of the 180-day period; or (2) wait for the final decision of the CIR on the disputed assessment, and then appeal such decision to the CTA within 30 days

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[124] *Fitness by Design*, 808 SCRA 422, 447–48.

after receipt of a copy of such decision. These options are mutually exclusive and resort to one bars the application of the other.[125]

Therefore, under jurisprudence, a taxpayer may not wait for the FDDA and instead go directly to the CTA to question the assessment made by the CIR or his duly authorized representative. For the taxpayer who did not wait for the FDDA, the due date for the payment of the tax appearing in the FLD/FAN would be the reckoning point of the imposition of delinquency interest. The due date appearing in the FDDA is inapplicable because there is no FDDA to speak of in this case.

Practically, this would result in the taxpayer being assessed a larger amount because the imposition of deficiency interest would start at the due date appearing in the FLD/FAN, which is always issued prior to an FDDA, as compared to the taxpayer who waited for the FDDA. A later reckoning point in the imposition of delinquency interest is unfair for a taxpayer who merely exercised his right to protest within 30 days after the lapse of the 180-day period due to the inaction of the CIR or his duly authorized representative. The taxpayer who exercised such right to appeal upon the lapse of the 180-day period cannot be prejudiced as against a taxpayer who likewise appealed but waited instead for the FDDA. The latter cannot stand to gain more for exercising a similar right. As held in the case of *Lascona Land Co., Inc. v. Commissioner of Internal Revenue*:[126]

> Therefore, as in Section 228, when the law provided for the remedy to appeal the inaction of the CIR, it did not intend to limit it to a single remedy of filing of an appeal after the lapse of the 180-day prescribed period. Precisely, when a taxpayer protested an assessment, he naturally expects the CIR to decide either positively or negatively. A taxpayer cannot be prejudiced if he chooses to wait for the final decision of the CIR on the protested assessment. More so, because the law and jurisprudence have always contemplated a scenario where the CIR will decide on the protested assessment.[127]

If the law stipulates that no prejudice should be inflicted on the taxpayer who chooses to wait for the final decision of the CIR on the disputed assessment, then there should be no prejudice as well for the taxpayer who files an appeal during the 30-day period after the lapse of 180 days of inaction of the CIR. The Constitution prescribes that there should be uniformity of

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[125] Rizal Comm'l Banking Corp. v. Comm'r of Internal Revenue, G.R. No. 168498, 522 SCRA 144, 153 (2007).

[126] Hereinafter "*Lascona Land*", G.R. No. 171251, 667 SCRA 455 (2012).

[127] *Id.* at 464.

taxation.[128] Uniformity of taxation, like the kindred concept of equal protection, merely requires that all subjects or objects of taxation, similarly situated, are to be treated alike both in privileges and liabilities.[129] As such, the law affords equal treatment to a taxpayer who filed an appeal before the Tax Court within 30 days after the lapse of 180-day period of inaction of the CIR, and to a taxpayer who chose to wait for the FDDA before filing an appeal before the Tax Court.

For there to be a valid classification that would not offend the constitutional right to equal protection of law, the classification must: (1) rest on substantial distinctions; (2) be germane to the purpose of the law; (3) apply, all things being equal, to both present and future conditions; and (4) apply equally to all those belonging to the same class.[130] Here, these conditions were not met. There is no substantial distinction that can be fathomed between a taxpayer who files an appeal upon the lapse of the 180-day period, and one who files an appeal upon receipt of the FDDA even beyond the lapse of the 180-day period. They are, simply, two taxpayers who are afforded alternative appellate remedies under the law. The manner of how they filed their respective judicial appeals should not prejudice them, especially a taxpayer who is only vigilant in the exercise of his rights. The classification is likewise not germane to the purpose of the law, as the NIRC of 1997 itself does not distinguish between the two types of taxpayers. It must be remembered that it was only in *Lascona Land* that the Supreme Court interpreted Section 228 as affording the taxpayer two ways of appeal, and this is not expressly provided for in the Tax Code.

D. Practical Considerations

If the current rule on the computation of delinquency interest continues, it is possible that taxpayers would simply wait for the FDDA instead of filing a timely appeal upon the lapse of the 180-day period. In case an assessment is sustained by the courts, there is no incentive on the part of the taxpayer to file an early appeal upon the lapse of the 180-day period. As shown in the following illustration, a taxpayer who files an appeal after waiting for the FDDA would be required to pay a lower amount than one who filed upon the lapse of the 180-day period, even though both just exercised the same right under the law.

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[128] CONST. art. VI, § 28(1).

[129] Tan v. Del Rosario, G.R. No. 109289, 237 SCRA 324, 331 (1994).

[130] British Am. Tobacco v. Camacho, G.R. No. 163583, 562 SCRA 511, 549 (2008).

Illustration 4.1: Mr. X was assessed by the CIR of deficiency income tax in the amount of PHP 1,000,000.00 for taxable year 2018, for which a return was filed on April 15, 2019. The FLD/FAN was received on January 15, 2020. The due date stated in the FLD/FAN for the payment of the tax is on February 15, 2020. Mr. X protested the assessment. Upon the lapse of the 180-day period for the CIR to decide on the protest, Mr. X filed a petition for review before the CTA on August 15, 2020. The CTA promulgated its decision sustaining the assessment on July 30, 2021. Upon finality and entry of judgment, Mr. X paid on September 1, 2021. The total amount Mr. X paid on said date is computed as follows:

Basic Tax Due	PHP	1,000,000.00
Add: Surcharge (25%)		250,000.00
Deficiency Interest (12%)		
4.16.2019 to 2.15.2020		
(1,000,000 x 12% x 306/365)		100,602.74
Total Due, February 15, 2020	PHP	1,350,602.74
Add: Delinquency Interest (12%)		
2.16.2020 to 9.1.2021		
(1,350,602.74 x 12% x 564/365)		250,435.05
Total Amount Due, September 1, 2021	PHP	1,601,037.79

Illustration 4.2: Similar to Mr. X, Mr. Y was assessed by the CIR for deficiency income tax in the amount of PHP 1,000,000.00 for taxable year 2018, for which a return was filed on April 15, 2019. The FLD/FAN was received on January 15, 2020. The due date stated in the FLD/FAN for the payment of the tax is on February 15, 2020. Mr. Y protested the assessment. Instead of filing a petition for review before the CTA upon the lapse of the 180-day period, Mr. Y decided to wait for the CIR's decision. The FDDA was received on October 15, 2020, and the new due date for the payment of the tax appearing in the FDDA is on November 15, 2020. Mr. Y then filed a petition for review before the CTA on December 1, 2020. The CTA promulgated its decision sustaining the assessment on July 30, 2021. Upon finality and entry of judgment, Mr. Y paid on September 1, 2021. The total amount Mr. Y paid on said date is computed as follows:

Basic Tax Due	PHP	1,000,000.00
Add: Surcharge (25%)		250,000.00
Deficiency Interest (12%)		
4.16.2019 to 11.15.2020		
(1,000,000 x 12% x 580/365)		190,684.93
Total Due, November 15, 2020	PHP	1,440,684.93

Add: Delinquency Interest (12%)		
11.16.2020 to 9.1.2021		
(1,440,356.16 x 12% x 290/365)		137,358.45
Total Amount Due, September 1, 2021	PHP	1,578,043.39

Illustration 4.3: Assuming the same facts in Illustration 4.2, if delinquency interest is computed based on the due date appearing in the FLD/FAN and not in the FDDA, the total tax liability of Mr. Y would be the same as that of Mr. X, as follows:

Basic Tax Due	PHP	1,000,000.00
Add: Surcharge (25%)		250,000.00
Deficiency Interest (12%)		
4.16.2019 to 2.15.2020		
(1,000,000 x 12% x 306/365)		100,602.74
Total Due, February 15, 2020	PHP	1,350,602.74
Add: Delinquency Interest (12%)		
2.16.2020 to 9.1.2021		
(1,350,602.74 x 12% x 564/365)		250,435.05
Total Amount Due, September 1, 2021	PHP	1,601,037.79

Usually, the BIR takes some time in deciding a protest, especially if it is a request for reinvestigation, where newly discovered or additional evidence is presented by the taxpayer, as compared for a request for reconsideration, which involves the re-evaluation of the existing records only.[131] Most of the time, the BIR goes beyond the 180-day period, and even takes years, in deciding on the protest made by the taxpayer. To illustrate, here are the cases recently decided by the Supreme Court in 2018 and 2019 where an FDDA was issued by the CIR:

Case	*Date Protest Filed*	*Date FDDA Received*	*Difference*	*Within 180-day Period?*
Asian Transmission Corp. v. Commissioner of Internal Revenue[132]	August 14, 2008	April 14, 2009	279 days	No
Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.[133]	May 9, 2003	July 14, 2004	432 days	No

[131] Rev. Reg. No. 12-99, § 3.1.4, *as amended by* Rev. Reg. No. 18-2013, § 2.
[132] G.R. No. 230861 (2018).
[133] G.R. No. 201398 (2018).

Avon Products Manufacturing, Inc. v. Commissioner of Internal Revenue[134]	August 5, 2010	September 7, 2010	33 days	Yes
Commissioner of Internal Revenue. v. Court of Tax Appeals[135]	April 6, 2004	August 20, 2004	136 days	Yes
Commissioner of Internal Revenue v. Ocier[136]	October 12, 2001	March 10, 2003	514 days	No
Commissioner of Internal Revenue v. La Flor Dela Isabela, Inc.[137]	January 15, 2010	July 20, 2010	186 days	No

In most of these cases, the FDDAs were issued way beyond the 180-day period for the CIR or his representative to decide on the protest. It means that if they had filed their respective protests upon the lapse of the said period, their respective assessments would have carried a bigger interest because of the earlier reckoning point for delinquency interest. But in the interest of fairness, this computation would bring uniformity in how interest is applied to all taxpayers, instead of the different dates the FDDA is received.

Lastly, *Total* relied on the principle that tax statutes are construed strictly against the government and liberally in favor of the taxpayer to justify the imposition of a lower penalty interest. Unless a statute imposes a tax clearly, expressly and unambiguously, what applies is the equally well-settled rule that the imposition of a tax cannot be presumed.[138] Hence, for the principle to apply, there should first be doubt or ambiguity in the words of the tax law. The error in applying such principle is that it presupposes an ambiguity in the words of Section 249(C) when there is none. The law is clear in that the commencement of delinquency interest is to start on the "notice and demand" made by the Commissioner. That "notice and demand" is, according to Section 228 and R.R. No. 12-99, as amended, the FLD/FAN.

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[134] G.R. No. 222480 (2018).

[135] G.R. No. 203403 (2018).

[136] G.R. No. 192023 (2018).

[137] G.R. No. 211289 (2019).

[138] *See* Commissioner of Internal Revenue v. SM Prime Holdings, Inc., G.R. No. 183505, 613 SCRA 774 (2010), *citing* Commissioner of Internal Revenue v. Phil. Am. Accident Ins. Co., Inc., 493 Phil. 785, 793 (2005).

V. EXCEPTION TO THE APPLICABILITY OF PENALTY INTEREST

A. Jurisprudential Basis

If a literal interpretation of Section 247(A) of the Tax Code is to be followed, it would be undeniable to read that the imposition of both deficiency and delinquency interest is a mandatory instruction. The provision requires that any addition to the tax, which includes surcharge and interest, "shall" apply to taxes, fees, and charges imposed by the Code. Any first-year law student learning the basics of statutory construction can answer that this is an imperative application of the law, and not an option that rests on the discretion of the BIR or the courts. "The use of the word 'shall' in a statute connotes a mandatory order or an imperative obligation. Its use rendered the provisions mandatory and not merely permissive[.]"[139] But any freshman law student is also taught that jurisprudence, which forms part of the law of the land,[140] may provide for exceptions to any general rule imposed by statute. For example, case law has provided for exceptions to the rule that the Supreme Court may not review the factual findings of lower courts brought under petitions for review on *certiorari* which must only raise purely legal questions.[141] In a landmark case,[142] the Supreme Court even provided for an exception for appointments in the Judiciary in contemplating the prohibition on "midnight appointments" under Section 15, Article VII of the Constitution.[143] In other words, the Court, in discharging its duty "to say what the law is,"[144] may interpret the text as forming for any exception to a general rule, and the Court has not shied away in providing for such exception in the case of penalty interest.

As early as 1964, the Supreme Court has ruled that a "controversy [that] was generated in good faith" may exempt an entity from paying the 25% surcharge.[145] In *Connell Bros. Co. (Phil.) v. Collector of Internal Revenue*,[146] the taxpayer was assessed of deficiency sales tax for the period 1948–1949. The Court ruled that it was subject of said tax, but not for the 25% surcharge. It

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[139] Power Sector Assets & Liab. Mgmt. Corp. v. Comm'r of Internal Revenue, G.R. No. 198146, 835 SCRA 235, 260 (2017).

[140] CIVIL CODE, art. 8.

[141] *See* Pascual v. Burgos, G.R. No. 171722, 778 SCRA 189 (2016).

[142] *See* De Castro v. Jud. & Bar Council, G.R. No. 191002, 615 SCRA 666 (2010).

[143] The provision only provides an exception for "temporary appointments to executive positions when continued vacancies therein will prejudice public service or endanger public safety."

[144] Marbury v. Madison, 5 U.S. 137 (1803).

[145] Connell Bros. Co. (Phil.) v. Collector of Internal Revenue [hereinafter "Connell Bros."], G.R. No. 15470, 9 SCRA 735 (1963).

[146] *Id.*

held that the taxpayer was not guilty of intentional violation of the law, as the delay in the payment of the deficiency arose from a mistaken understanding of the regulations of the BIR. The *ratio* in *Connell Bros.* was upheld in *Imus Electric Co., Inc. v. Court of Tax Appeals*,[147] where the 25% surcharge on the unpaid franchise tax was also cancelled.

In the case of *Tuason v. Lingad*,[148] the Supreme Court cancelled the imposition of 5% surcharge and 1% monthly interest on deficiency income tax because the taxpayer "relied in good faith upon opinions rendered by no less than the highest officials of the Bureau of Internal Revenue, including the Commissioner himself."[149] Meanwhile, in *Commissioner of Internal Revenue v. Republic Cement Corp.*,[150] the Court likewise cancelled the imposition of 25% surcharge on the tax on sales of cement because the taxpayer's cause was "founded upon the original stand of the [BIR] itself that cement is a mineral product rather than a manufactured product and is therefore subject to *ad valorem* tax, not sales tax."[151] However, it must be noted that these cases were decided under the aegis of the previous versions of the Tax Code.

Perhaps it is the case of *Michael J. Lhuillier Pawnshop, Inc. v. Commissioner of Internal Revenue*,[152] decided under the current Tax Code, which provides for sound jurisprudential support for the "good faith" exception enunciated in the previous rulings of the Court. In this case, the taxpayer was assessed of deficiency DST on its pawn tickets issued to its customers. The Court ruled that such a ticket is proof of an exercise of a taxable privilege of concluding a contract of *pledge*, which is subject to DST under Section 195 of the Tax Code. The Court further ruled, in the Resolution of the taxpayer's motion for reconsideration,[153] that the taxpayer's reliance on BIR Ruling No. 325-88 dated July 13, 1988, which stated that a pawn ticket is not an instrument of indebtedness and therefore not subject to DST, is exculpatory of its liability to pay both surcharge and interest. Citing *Connell Bros.*, the Court held that "the settled rule is that good faith and honest belief that one is not subject to tax on the basis of previous interpretation of government agencies tasked to implement the tax law, are sufficient justification to delete the imposition of surcharges and interest."[154]

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[147] G.R. No. 22421, 19 SCRA 612 (1967).

[148] G.R. No. 24248, 58 SCRA 170 (1974).

[149] *Id.* at 178–79.

[150] G.R. No. 35668, 124 SCRA 46 (1983).

[151] *Id.* at 62.

[152] [Hereinafter "Lhuillier"], G.R. No. 166786, 489 SCRA 147 (2006).

[153] Michael J. Lhuillier Pawnshop, Inc. v. Comm'r of Internal Revenue, G.R. No. 166786, 501 SCRA 450 (2006).

[154] *Id.* at 460.

The ruling in *Lhuillier* would pave the way for the cancellation of surcharge and interest impositions in a number of DST assessment cases against pawnshops. In *Antam Pawnshop Corp. v. Commissioner of Internal Revenue*,[155] the Court ruled that the taxpayer was not subject of penalty interest for its good faith reliance in the ruling of the BIR that pawn tickets are not subject to DST, similar to *Lhuillier*. The same *ratio* was applied in the case of *H. Tambunting Pawnshop, Inc. v. Commissioner of Internal Revenue*,[156] where the Court noted that the taxpayer's appeal was filed before the promulgation of the decision in *Lhuillier*, thus good faith can still be ascribed to the taxpayer.

However, in *Phil. Basketball Ass'n v. Court of Appeals*,[157] the Supreme Court refused to apply the exception due to a procedural lapse—the issue of whether it can be invoked was not raised in the earliest possible opportunity:

> The last issue for resolution concerns the liability of petitioner for the payment of surcharge and interest on the deficiency amount due. Petitioner contends that it is not liable, as it acted in good faith, having relied upon the issuances of the respondent Commissioner. This issue must necessarily fail as the same has never been posed as an issue before the respondent court. Issues not raised in the court *a quo* cannot be raised for the first time on appeal.[158]

This may be in line with the maxim that laws granting tax exemptions are construed in *strictissimi juris* against the taxpayer.[159] The Court is simply saying that a valid invocation of the exemption requires compliance with the procedural rules in appealing any assessment or tax refund claim as arguments not raised in trial may not be raised for the first time on appeal.[160] The issue of whether the "good faith" exemption applies must first be included in the pleadings before the CIR or CTA, as the case may be.

B. Requisites

From the ruling in *Connell Bros.* up until *H. Tambunting*, it is not difficult to summarize the common requisites for the application of the "good faith" exception, as follows:

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[155] G.R. No. 167962, 566 SCRA 57 (2008).

[156] G.R. No. 171138, 584 SCRA 445 (2009).

[157] [Hereinafter, "Phil. Basketball Ass'n."], G.R. No. 119122, 337 SCRA 358 (2000).

[158] *Id.* at 369–70.

[159] Commissioner of Internal Revenue v. Ct. of Appeals, G.R. No. 124043, 298 SCRA 83, 97 (1998).

[160] *See* Chinatrust (Phil.) Comm'l Bank v. Turner, G.R. No. 191458, 828 SCRA 499, 515 (2017).

(1) There is a valid ruling issued by the BIR;

(2) The ruling must categorically state that the transaction is exempt from tax;

(3) The taxpayer relied on the ruling in good faith; and

(4) The issue of exemption must not be raised for the first time on appeal.

1. Valid Ruling Issued by the BIR

The first requirement under the "good faith" exception is that the interpretation be made by the government agency tasked with implementing the law. This is the BIR, which is empowered by the Tax Code to have such powers and functions necessary for the enforcement of the Code and other tax laws.[161]

Section 4 of the Tax Code authorizes the CIR to interpret the provisions of the Code. Under Revenue Memorandum Order No. 9-2014 dated February 6, 2014, *tax rulings* are defined as:

> [O]fficial positions of the Bureau on inquiries of taxpayers, who request clarification on certain provisions of the National Internal Revenue Code (NIRC), other tax laws, or their implementing regulations, usually for the purpose of seeking tax exemptions. Rulings are based on particular facts and circumstances presented and are *interpretations of the law* at a specific point in time.[162]

In *Egis Projects S.A. v. Secretary of Finance*,[163] the CTA *En Banc* defined BIR rulings as follows: "BIR Rulings are official position of the BIR to queries raised by taxpayers and other stakeholders relative to *clarification and interpretation of tax laws*. It may be classified into: (1) rulings of first impression or (2) rulings with established precedents."[164]

For there to be a ruling issued by the BIR, a particular set of facts should be presented. Hypothetical questions, or "what if" questions, are not entertained[165] as the BIR is an agency not empowered to issue advisory

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[161] TAX CODE, § 2.

[162] Rev. Mem. Order No. 9-2014, § 1. (Emphasis supplied.)

[163] CTA EB No. 1023 (Ct. of Tax Appeals Sept. 16, 2014). (Emphasis supplied.)

[164] *Id.*

[165] Rev. Mem. Order No. 9-2014, § 3.

opinions, but this power of issuing rulings emanates from its statutory authority of interpreting the provisions of the Tax Code.[166]

If the BIR promulgates an adverse ruling, the taxpayer has recourse to appeal said decision to the Secretary of Finance within 30 days from receipt of said ruling.[167] If the Secretary sustains the adverse ruling, the taxpayer now has recourse to the courts. The taxpayer may file a petition for review before the CTA over the Secretary's ruling.[168] As the specialized body designated by law to be the arbiter of matters relating to tax, the CTA exercises jurisdiction, and not the Court of Appeals nor the Office of the President.[169] It must be noted that the taxpayer must avail all administrative remedies first before resorting to the courts, applying the doctrine of exhaustion of administrative remedies, unless it falls under any of the exceptions under case law.[170]

2. Ruling Must State that the Transaction is Exempt from Tax

The BIR ruling, as an administrative decision of the CIR or his duly designated representative, must state clearly the facts and the law to which it is based,[171] for there to be an intelligent appeal that may be filed by the adversely affected taxpayer. If the BIR grants the request of the taxpayer, it must be categorical in its disposition that the transaction applied for, under the presented set of facts, is actually exempt from tax. Such categorical statement must be complied with to assure that the "taxpayer may ordinarily rely on a valid ruling received from the Bureau pertaining to the transaction it was applied for."[172] If doubt pervades the ruling, then ordinary reliance by the taxpayer may be put in question. The interpretation of executive officers, whose duty is to enforce the law, is entitled to great respect, if not conclusive finality.[173] A categorical disposition gives credence to the ruling issued by the BIR. Any taxpayer who cannot point to a provision of law, which the BIR ruling merely clarifies and interprets, may not claim the benefit of exemption from taxation.[174]

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[166] TAX CODE, § 4.

[167] Dep't of Fin. Order No. 023-01 (2001). Providing for the Implementing Rules of the First Paragraph of Section 4 of the National Internal Revenue Code of 1997.

[168] *See* Philippine Am. Life & Gen. Ins. Co. v. Sec'y of Fin., G.R. No. 210987, 741 SCRA 578 (2014).

[169] *Id.*

[170] *See* Banco de Oro v. Republic, G.R. No. 198756, 745 SCRA 361 (2015).

[171] REV. ADM. CODE, Bk. 8, Ch. 3, § 14.

[172] Rev. Mem. Order No. 9-2014, § 7.

[173] Mitsubishi Corp.-Manila Branch v. Comm'r of Internal Revenue, G.R. No. 175772, 825 SCRA 332, 349 (2017).

[174] Commissioner of Internal Revenue v. Guerrero, G.R. No. 20942, 21 SCRA 180, 184 (1967).

3. Taxpayer Relied on Ruling in Good Faith

The third requisite mandates that there be reliance by the taxpayer in the ruling. It is not sufficient that the taxpayer thinks that an exemption is applicable to him. There must be support in the form of the administrative opinion issued by the BIR, and the reliance to such ruling must be done in good faith. Good faith is a broad standard to begin with. It is undefined in Philippine statute books, but according to BLACK'S LAW DICTIONARY, it is:

> A state of mind consisting in (1) honesty in belief or purpose, (2) faithfulness to one's duty or obligation, (3) observance of reasonable commercial standards of fair dealing in a given trade or business, or (4) absence of intent to defraud or to seek unconscionable advantage.[175]

Jurisprudence may be able to shed light into what its parameters are, for there to be an appropriate consideration whether a certain act is done in good faith or not:

> Good faith is an intangible and abstract quality with no technical meaning or statutory definition, and it encompasses, among other things, an honest belief, the absence of malice and the absence of design to defraud or to seek an unconscionable advantage. It implies honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry. The essence of good faith lies in an honest belief in the validity of one's right, ignorance of a superior claim and absence of intention to overreach another.[176]

Evidently, it is easier to explain good faith in its negative notation—the absence of bad faith. In the context of tax law, good faith entails the absence of intent to defraud the government or to evade tax. It is not merely negligence, but "intentional fraud, consisting of deception willfully and deliberately done or resorted to in order to induce another to give up some legal right."[177] This only means that when the taxpayer requests for a tax-exemption ruling on a transaction, it is asking with the knowledge and honest belief that the Tax Code affords such tax exemption, and the BIR issues the ruling in due course, without any hint of fault or irregularity attributable to the taxpayer.

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[175] *Supra* note 36, at 762.

[176] Ochoa v. Apeta, G.R. No. 146259, 533 SCRA 235, 240 (2007).

[177] Aznar v. Ct. of Tax Appeals, G.R. No. 20569, 58 SCRA 519, 543 (1974).

However, it is a fundamental principle in law that good faith is always presumed, and upon anyone who alleges bad faith lies the burden to prove otherwise.[178] It is therefore incumbent upon the BIR, or to any person who bears an interest in the case, to allege and eventually prove that the taxpayer was not in good faith when it applied for the exemption.

4. Issue Raised Not for First Time on Appeal

If the case has reached the courts, a taxpayer may validly avail of the "good faith" exemption if it was raised in the pleadings and not for the first time on appeal. This means that such exemption must be invoked in its protest before the CIR, or in its petition for review before the CTA, as the case may be. The importance of raising the issue for the first time is explained by the Supreme Court, *viz*.:

> To allow a litigant to assume a different posture when he comes before the court and challenge the position he had accepted at the administrative level would be to sanction a procedure whereby the court—which is supposed to review administrative determinations would not review, but determine and decide for the first time, a question not raised at the administrative forum. This cannot be permitted, for the same reason that underlies the requirement of prior exhaustion of administrative remedies to give administrative authorities the prior opportunity to decide controversies within its competence, and in much the same way that, on the judicial level, issues not raised in the lower court cannot be raised for the first time on appeal.[179]

C. Practical Considerations

The Supreme Court, in deciding that a BIR ruling which had been relied in good faith by a taxpayer, may be a source of right which may be claimed by the taxpayer. In the landmark case of *Commissioner of Internal Revenue v. San Roque Power Corp.*,[180] the Court held that BIR Ruling No. DA-489-03 dated December 10, 2003, which stated that taxpayers may file a VAT refund claim even within the 120-day period under Section 112 of the Tax Code, may not prejudice taxpayers who relied on it in good faith.

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[178] CIVIL CODE, art. 527.

[179] Commissioner of Internal Revenue v. Euro-Phils. Airlines Serv., Inc., G.R. No. 222436 (2018), *citing* Aguinaldo Indus. Corp. v. Comm'r of Internal Revenue, G.R. No. 29790, 112 SCRA 136, 140 (1982).

[180] G.R. No. 187485, 690 SCRA 336 (2013).

It must be noted that both deficiency and delinquency interest are imposed not as a penalty but as compensation for non-payment of the tax due to the government.[181] Hence, it would be contrary to the principles of fairness and equity if a taxpayer who relied on the interpretation of the BIR itself is thereafter subjected to penalty interest for a tax it believed is not applicable. If the agency which projects the yearly revenues and collections of the government opines that a transaction is exempt from tax, it is only fit that a subsequent opinion reversing that view should not prejudice a taxpayer who relied on it in good faith.

> *Illustration 5.1*: Corporation X requested for a BIR ruling that a certain transaction it executed was exempt from DST. The BIR issued the ruling on March 15, 2018. However, in a subsequent ruling issued on October 15, 2018, the BIR reversed itself and ruled that the transaction was subject to DST. The taxpayer was subsequently assessed for deficiency DST in the amount of PHP 1,000,000.00 on the said transaction. Corporation X protested, alleging reliance in good faith that the transaction was exempt from DST based on the original BIR ruling, but it was denied by the Commissioner. The due date appearing in the FLD/FAN for the payment of the tax was December 15, 2018, and the taxpayer voluntarily paid on said date. The total amount Corporation X paid on said date is computed as follows:

Basic Tax Due	PHP	1,000,000.00
Add: Surcharge (25%)		-
Deficiency Interest (12%)		-
Delinquency Interest (12%)		-
Total Due, December 15, 2018	PHP	1,000,000.00

To apply for a ruling, a taxpayer must submit a letter request for the issuance of a ruling, which is a sworn statement is submitted to BIR's Law and Legislative Division executed under oath by the taxpayer or by the authorized representative if a corporation.[182] Such statement must contain: (1) the factual background of the circumstances surrounding the request; (2) the issues raised or conclusions sought; (3) the legal grounds and authorities supporting the position of the taxpayer; (4) list of documents submitted; and (5) certain affirmations that would not preclude the BIR from issuing the ruling.[183] In obtaining a ruling, the taxpayer should be able to clearly set the facts, and submit all relevant documents to the BIR already. This is an

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[181] Philippine Refining Co. v. Ct. of Appeals, G.R. No. 118794, 256 SCRA 667, 678 (1996).

[182] Rev. Mem. Order No. 9-2014, § 4.

[183] Rev. Mem. Order No. 9-2014, § 4.

examination short of an expansive audit. That is why it is "not uncommon to receive a feedback that the request for ruling is still far from the queue, despite the fact that the request has been pending for years."[184] And to receive a favorable ruling from the BIR would be a good sign that, at least, there is sound legal and factual basis for the exemption.

CONCLUSION

It is recognized that the government is given remedies when it comes to taxpayers who fail to pay their due share in the running of government. Interest, be it for deficiency or delinquency, is imposed not as a penalty *per se* against the taxpayer, but merely to compensate the government for money which it should have collected at the prescribed time for payment.

To effectively impose such interest, scrutiny of the words of the Tax Code is necessary, as well as the examination of its legislative history. Upon such exercise done in this Note, it was observed that the imposition of both deficiency and delinquency interest has not been a straightforward matter.

First, "deficiency" in Section 249(B) of the Tax Code has a technical meaning. There is a statutory directive to find its definition in the other provisions of the Code, and it is defined under the context of income, estate, and donor's tax only. Hence, the Tax Code intended deficiency interest to be imposed only on such taxes, and not to any other. Tracking the legislative history of the Tax Code would also show that deficiency interest has only been imposed on these three taxes.

Second, the Tax Code likewise permits the simultaneous imposition of both deficiency and delinquency interest. Though this has been expressly prohibited by the TRAIN Law, this practice is still important for all assessments done before the effectivity of TRAIN, and those currently pending before the BIR and the courts. The text of the Tax Code supports this conclusion, as well as the interpretation made by the Tax Court.

Third, delinquency interest commences upon the due date appearing in the notice and demand by the CIR, which corresponds to the FLD/FAN. Under the Tax Code, revenue regulations, and jurisprudence, the FLD/FAN is the trigger point for the imposition of penalties, and not the PAN or

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[184] Rodel C. Unciano, *Requests for BIR rulings, is it worth the wait?*, BUSINESS MIRROR, Feb. 12, 2019, *available at* https://businessmirror.com.ph/2019/02/12/requests-for-bir-rulings-is-it-worth-the-wait/.

FDDA. Moreover, to construe this "notice and demand" as corresponding to the FDDA would be unfair for a taxpayer who opted to appeal the FLD/FAN without waiting for the FDDA, because such taxpayer would be prejudiced for exercising a similar right as that of a taxpayer who waited for the FDDA. Practical considerations likewise dictate the running of delinquency interest from the FLD/FAN, and not any other document.

Last, precedent has created an exception to the mandatory character of imposing penalty interest. This, being in the nature of a tax exemption, should be construed against the taxpayer. Hence, there must be strict compliance with the requisites laid down in jurisprudence, namely: (1) there is a valid BIR ruling; (2) the BIR ruling categorically states that the transaction was exempt from tax; (3) that the taxpayer relied on it in good faith; and (4) such issue should not be raised for the first time on appeal.

With these proposed guidelines, it is hoped that the imposition of penalty interest on tax cases be more in line with the law, and at the same time be more reasonable and just. When one encounters his or her tax bill, he or she should know whether or not any kind of interest has been imposed. Knowledge of how interest works is thus essential for any taxpayer—as Alfred Einstein once allegedly quipped, "He who understands it, earns it; he who doesn't, pays it."[185]

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[185] Nick Bendel, *Why Albert Einstein loved compound interest*, RATE CITY WEBSITE, May 19, 2017, *at* https://www.ratecity.com.au/investment-funds/articles/albert-einstein-loved-compound-interest. (last accessed May 28, 2019).