



REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **20 January 2021** which reads as follows:

**“G.R. No. 221655 (E.E. Black Ltd. – Philippine Branch v. The Commissioner of Internal Revenue).**

The application of *Commissioner of Internal Revenue v. Filinvest Dev’t Corp.*<sup>1</sup> (*Filinvest*) to petitioner E.E. Black Ltd. – Philippine Branch (petitioner)’s case does not violate the principle of non-retroactivity of laws and rulings. This Court, in *Filinvest*, interpreted the term “loan agreements” in Section 180<sup>2</sup> of the 1993 Tax Code<sup>3</sup> (now Section 179<sup>4</sup> of the 1997 Tax Code, as amended),<sup>5</sup> as subject to documentary stamp tax (DST).<sup>6</sup> As correctly discussed by the Court of Tax Appeals (CTA), Section 180 of the 1993 Tax Code was first incorporated in Republic Act (RA) No. 7660 on

<sup>1</sup> 669 Phil. 323 (2011).

<sup>2</sup> SECTION. 180. *Stamp tax on all loan agreements, promissory notes, bills of exchange, drafts, instruments and securities issued by the government or any of its instrumentalities, certificates of deposit bearing interest and others not payable on sight or demand. -- On all loan agreements signed abroad wherein the object of the contract is located or used in the Philippines;* bill of exchange (between points within the Philippines), drafts, instruments and securities issued by the Government or any of its instrumentalities or certificates of deposits drawing interest, or orders for the payment of any sum of money otherwise than at the sight or on demand, or on all promissory notes, whether negotiable or non-negotiable x x x. (Emphasis and underscoring supplied.)

<sup>3</sup> Republic Act No. 7660 entitled “AN ACT RATIONALIZING FURTHER THE STRUCTURE AND ADMINISTRATION OF THE DOCUMENTARY STAMP TAX, AMENDING FOR THE PURPOSE CERTAIN PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, ALLOCATING FUNDS FOR SPECIFIC PROGRAMS, AND FOR OTHER PURPOSES;” approved on December 23, 1993; published in *Malaya and the Philippine Times Journal* on December 23, 1993; and published in the *Official Gazette* on January 17, 1994.

<sup>4</sup> SEC. 179. *Stamp Tax on All Debt Instruments. -- On every original issue of debt instruments, there shall be collected a documentary stamp tax [of] One peso (P1.00) on each Two hundred pesos (P200), or fractional part thereof, of the issue price of any such debt instruments: Provided, x x x*

For purposes of this section, the term debt instrument shall mean instruments representing borrowing and lending transactions including but not limited to debentures, certificates of indebtedness, due bills, bonds, loan agreements, including those signed abroad wherein the object of contract is located or used in the Philippines, instruments and securities issued by the government or any of its instrumentalities, deposit substitute debt instruments x x x. (Emphasis supplied.)

<sup>5</sup> RA No. 9243 entitled “AN ACT RATIONALIZING THE PROVISIONS ON THE DOCUMENTARY STAMP TAX OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES;” approved on February 17, 2004; and published on March 5, 2004.

<sup>6</sup> *Supra* note 1, at 355.

December 23, 1993, and carried over to RA No. 8424 (1997 Tax Code), as amended by RA No. 9243. In fine, the imposition of DST on loan agreements was retained in the present Section 179 of the 1997 Tax Code, as amended by RA No. 9243. Considering that this interpretation in *Filinvest* has been part of the Tax Code as of December 23, 1993 up to present, the application of *Filinvest* to petitioner's case does not violate the principle of non-retroactivity of laws and rulings.

*Filinvest* did not overturn any previous interpretation or doctrine of this Court. Petitioner's reliance on the Bureau of Internal Revenue (BIR) Rulings issued in favor of other entities did not support its cause because these BIR Rulings only apply to the specific entity that requested it, in accordance with the particular facts and applicable laws presented by the requesting entity.

As to the petitioner's liability for surcharge and interests on the assessed deficiency DST, Section 248<sup>7</sup> of the 1997 Tax Code plainly provides that the delay in the payment of the deficiency tax justifies the imposition of a twenty-five percent (25%) surcharge. Section 249<sup>8</sup> imposes deficiency interest of twenty percent (20%) *per annum* on any deficiency in the amount of tax due computed from the date prescribed for its payment until the full payment, and delinquency interest of twenty percent (20%) *per annum* on the unpaid amount until full payment. Unfortunately, good faith could not be considered in favor of petitioner since it failed to obtain a favorable ruling from the BIR that would categorically state or pronounce

<sup>7</sup> SEC. 248. *Civil Penalties.* —

(A) There shall be imposed, in addition to the tax required to be paid, a penalty equivalent to twenty-five percent (25%) of the amount due, in the following cases:

- (1) Failure to file any return and pay the tax due thereon as required under the provisions of this Code or rules and regulations on the date prescribed; or
- (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
- (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.

X X X X

<sup>8</sup> SEC. 249. *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 by rules and 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 Subsection (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 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.

X X X X

that their loan agreements or intercompany advances were not subject to DST.

However, taking into account the amendment in Section 249 by RA No. 10963, otherwise known as the “*Tax Reform for Acceleration and Inclusion (TRAIN) Law*,” and as implemented by Revenue Regulations No. 21-2018,<sup>9</sup> the imposition of deficiency and delinquency interests must be modified.

Section 249(A) of the TRAIN Law changes the rate of interest to double the legal interest rate for loans or forbearance of any money as set by the *Bangko Sentral ng Pilipinas* (BSP), and proscribes the simultaneous imposition of deficiency and delinquency interest, effective January 1, 2018, 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 payment until the amount is fully paid: *Provided*, That in no case shall the deficiency and delinquency interest prescribed under Subsections (B) and (C) hereof, be imposed simultaneously.

The prevailing rate of interest *per* BSP Circular No. 799, series of 2013 for loans or forbearance of any money in the absence of an express stipulation is six percent (6%). Thus, the rate of legal interest to be imposed beginning January 1, 2018 shall be twelve percent (12%).

**FOR THESE REASONS**, the petition is **DENIED**. The Court of Tax Appeal’s Decision dated on November 11, 2015 in CTA EB Case No. 1196 is **AFFIRMED with MODIFICATIONS** in that E.E. Black Ltd.-Philippine Branch is ordered to pay interest on the basic deficiency documentary stamp tax of ₱1,329,255.00 as follows:

- (a) Deficiency interest at the rate of twenty percent (20%) *per annum* on the basic deficiency Documentary Stamp Tax of ₱1,329,255.00 computed from January 5, 2008 until December 31, 2017;
- (b) Delinquency interest at the rate of twenty percent (20%) *per annum* on the basic deficiency Documentary Stamp Tax of ₱1,329,255.00, and surcharge of ₱332,313.75, or a total of

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<sup>9</sup> REGULATIONS IMPLEMENTING SECTION 249 (INTEREST) OF THE NATIONAL INTERNAL REVENUE CODE (NIRC) OF 1997, AS AMENDED UNDER SECTION 75 OF THE REPUBLIC ACT (RA) NO. 10963 OR THE “TAX REFORM FOR ACCELERATION AND INCLUSION (TRAIN LAW),” dated September 14, 2018.

₱1,661,568.75, and on the deficiency interest which have accrued as stated in (a) computed from January 23, 2012 until December 31, 2017; and

- (c) Delinquency interest at the rate of twelve percent (12%) *per annum* on the unpaid amount (basic tax plus surcharge plus interests computed in (a) and (b) above) computed from January 1, 2018 until full payment, in accordance with Section 249 (C) (3) of the 1997 Tax Code as amended by Republic Act No. 10963 and as implemented by Revenue Regulations No. 21-2018.<sup>10</sup>

SO ORDERED.” (Rosario, J., *on official leave.*)

By authority of the Court:

TERESITA AQUINO TUAZON  
Division Clerk of Court

By:



MA. CONSOLACION GAMINDE-CRUZADA  
Deputy Division Clerk of Court *Whh*

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<sup>10</sup> Section 6 of Revenue Regulations No. 21-2018 provides:

**SEC. 6. TRANSITORY PROVISION.** -- In cases where the tax liability/ies or deficiency tax/es became due before the effectivity of the TRAIN Law on January 1, 2018, and where the full payment thereof will only be accomplished after the said effectivity date, the interest rates shall be applied as follows:

<i>Period</i>	<i>Applicable Interest Type and Rate</i>
For the period up to December 31, 2017	Deficiency and/or delinquency interest at 20%
For the period January 1, 2018 until full payment of the tax liability	Deficiency and/or delinquency interest at 12%

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(CTA EB Case No. 1196;  
CTA Case No. 8526)

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\*with copy of CTA Decision dated 11 November 2015.  
*Please notify the Court of any change in your address.*  
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