

UPDATE ON TAXPAYERS' RIGHTS AND REMEDIES

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OBJECTIVES

- 1. To learn the basic rights and remedies of taxpayers under the Tax Code in connection with the assessment of deficiency taxes or refund/tax credit of erroneously paid tax or unused excess input tax by the BIR;
- 2. To study important and latest court decisions on relevant tax issues relating to assessment or refund/tax credit of taxes; and
- 3. To relate and apply above tax remedies and jurisprudence to existing cases or problems of participants.

- **PART I:**
- **INTRODUCTION**

TAXATION

- **The power of taxation is inherent in the State and is a necessity. Without taxes, no government can exist nor endure! People pay taxes as the price for a civilized society.**
- **Taxation is the destructive power which interferes with the personal and property rights of the people and takes from them a portion of their property for the support of the government.**

» *Paseo Realty & Dev. Corp. vs. Court of Appeals*

- **Taxation should be exercised with caution to minimize the injury to the proprietary rights of a taxpayer. It must be exercised fairly, equally, and uniformly, lest the collector kill the “hen that lays the golden eggs.” In order to maintain the general public’s trust and confidence in the government, this power must be used justly and not treacherously.**

Roxas y Cia vs. CTA, 23 SCRA 276

BIR ORGANIZATIONAL STRUCTURE

- **NATIONAL OFFICE**

- COMMISSIONER OF INTERNAL REVENUE

- Deputy Commissioner (Operations Group; Legal & Enforcement Group)
 - Assistant Commissioner (Large Taxpayers Service, Enforcement Service, Legal Service, Assessment Service & Collection Service)
 - » Division Chief (LTAID, LTDO & National Investigation Division)

- **REGIONAL OFFICES**

- REGIONAL DIRECTOR

- Assistant Regional Director
 - Division Chief (Assessment, Collection & Legal)
 - » Revenue District Officer & Special Investigation Division

DUTIES OF BIR

- **DUTIES OF BIR**
 - To assess and collect taxes
 - To enforce forfeitures, fines and penalties
 - To execute judgments in all cases decided in its favor by the tax court and ordinary courts
 - To administer supervisory and police powers conferred upon it by law
- **POWERS OF CIR**
 - To interpret tax laws and regulations
 - To decide on disputed assessments and refunds/credits
 - To examine books and records of taxpayers and to assess correct taxes. However, (a) when a *report required by law* is not forthcoming within the time fixed by law or rules, or (b) there is reason to believe that such report is false, incomplete or erroneous, CIR shall assess proper tax based on “best evidence obtainable”

- **PART II:**
- **REMEDIES BEFORE PAYMENT OF TAX**
 - **FILE VALID AND TIMELY PROTEST AGAINST AN ASSESSMENT**

ASSESSMENT CYCLE

- **Filing of tax return**
- Tax audit by BIR
- Informal Conference
- Preliminary Assessment Notice (PAN)
- **Reply to PAN**
- Final Assessment Notice (FAN) and demand letter
- **Protest to FAN**
- **Supplemental Protest**
- Law prescribes due date
- 120 days + 120 days
- 15 days from receipt
- 3 years or 10 years
- 30 days from receipt
- 60 days from filing of protest

ASSESSMENT CYCLE

- BIR ACTION
 - Cancel/withdraw assessment
 - Deny protest
 - Revise assessment
- BIR INACTION
- **Appeal to CTA**
 - 180 days from filing of protest, or supplemental protest, if any
- **Appeal to CTA *en banc***
 - 30 days from date of receipt of denial of protest or lapse of 180 days
- **Appeal to Supreme Court**
 - 15 days from date of receipt; additional 15 days may be granted by CTA after payment of docket fee.

DEADLINES FOR FILING OF TAX RETURNS AND PAYMENT OF TAXES

- **INCOME TAX**
 - Quarterly Return -- RCIT: 60 days after end of quarter
 - -- Self-employed: Apr 15 (Q1) and 45 days after EOQ (Q2&3)
 - **Annual Return** -- **15th day of fourth month of the following year**
 - Capital gains tax return -- 30 days from date of sale
- **WITHHOLDING TAX**
 - Creditable WT return -- **10 days after end of month, except for**
 - Final WT return -- **December, Jan 15 of following year**
- **TRANSFER TAXES**
 - 6 months from date of death (**estate tax**)
 - 30 days from date of donation (**donor's tax**)
- **VAT**
 - Monthly Declaration -- 20th day of following month
 - **Quarterly Return** -- **25th day following close of quarter**
- **OTHER PERCENTAGE TAX**
 - Monthly return -- 20th day of following month
- **DST**
 - DST return -- **5th day of following month**

BEFORE TAX AUDIT

- **REMEDY AFTER FILING TAX RETURN**

- After filing original tax return, taxpayer may file amended tax return within 3 years from date of filing original return, provided that no “audit notice” in the meantime has been served upon him by the BIR.
 - “Tentative” financial statements for the year
 - Filing of amended tax return may extend period to assess tax
- Audit notice may be in any of the following forms:
 - Letter of Authority (LA)
 - Tax Verification Notice (TVN)
 - Letter Notice (LN)
 - Memorandum of Assignment (MOA)
- “White Paper” is not an audit notice.

DURING TAX AUDIT

- Checklist of books and records to produce
 - First Notice
 - Second Notice
 - Final Notice
 - *Subpoena Duces Tecum* [signed by ACIR (Legal Service) or Chief, Legal Div]
 - Filing of **Complaint** for contempt by BIR with the fiscal's office
 - Payment of compromise penalty
 - Filing of **Information** by fiscal with regular court
- Revenue officers authorized to conduct audit
- Variances in figures shown in tax returns, audited financial statements, alpha lists, inventories, SLS & SLP, etc.
 - Reconciliation statement
 - Breakdown of accounts
 - Reclassification or presentation of accounts
 - Other incomes

DURING TAX AUDIT

- **WAIVER OF STATUTE OF LIMITATION**

- Who initiates execution of waiver?
- Policy of the company on waivers?
- Implications of not signing or execution of waiver?
 - Absence of waiver: Immediate issuance of PAN & FAN. Written reports of exam shall be submitted by revenue officers not later than 6 months before prescriptive period to assess.
 - Execution of waiver: Period to assess may be extended by valid waiver timely executed, but taxes not assessed at time of execution of valid waiver is not extended.
- PAN is easier to be cancelled or reduced than FAN
- Until FAN is issued by BIR, there is no legal liability to pay deficiency tax on the part of taxpayer
- There must be a valid waiver that conforms with the provisions of RMO 20-90 in order to extend period of prescription

PRE-ASSESSMENT NOTICE

- **PAN** gives taxpayer the opportunity to explain his position on the findings of revenue officers during the audit and is part of the due process clause.
- **GENERAL RULE:** PAN must be issued by BIR, before issuing FAN and demand letter.
- **EXCEPTIONS:** No PAN is required.
 - Deficiency tax is the result of mathematical error
 - Discrepancy is between amount withheld and amount of withholding tax remitted
 - Taxpayer who opted to claim refund/tax credit also carried over and applied the same against tax of next taxable quarter
 - Excise tax due has not been paid
 - Constructive importation (*Sec. 228, NIRC*)

REPLY TO PAN

- **WHEN TO FILE REPLY?**
 - Within 15 days from date of receipt of PAN
 - Extension may be requested from BIR
- **CONTENT OF REPLY?**
 - Explanation to every item of income or deduction or other matter questioned by revenue officer
 - Factual and/or legal bases, including applicable jurisprudence
 - Prays for total or partial cancellation of PAN
- **QUESTION OF FACT OR LAW**
 - **Question of fact:** Truth or falsity? These are handled by revenue officers of audit office and generally need documentary evidence.
 - **Question of law:** Law on certain set of facts? These are handled by lawyers at Legal Division and generally require discussion of the law and jurisprudence.
- **DUE PROCESS OF LAW**
 - Issuance of FAN and Demand Letter is tantamount to denial of Reply to PAN. Essential elements of due process are notice and opportunity to present one's side (*Phil. Health Care Providers vs. CIR*)

CIR v. Julieta Ariete

- **FACTS:**

- **May 21, 1997:** Informer filed affidavit with SID, Davao, declaring that no ITRs were filed by taxpayer for 1994-1996.
- **May 23, 1997:** SID Chief issued Mission Order.
- **Oct 15, 1997:** RO reported no ITRs were filed.
- **Dec 2, 1997:** Respondent filed **ITRs** for 1993-1996 when BIR offered VAP under RMO 59-97, as amended by RMO 60-97 and 63-97.
- **July 28, 1998:** RD issued **LA** for 1993-1996. After investigation, 4 assessment notices were issued in total amount of P191,463.04.
- Feb 22, 1999: Protest was filed.
- Mar 30, 1999: Protest was denied. Taxpayer is not entitled to benefits under VAP.

CIR v. Julieta Ariete

- Apr 16, 1999: Respondent offered compromise, but it was denied by BIR.
- Respondent filed petition for review with CTA.
- Jan 15, 2002: CTA rendered decision cancelling deficiency assessments. MR filed by CIR but denied by CTA.
- Petitioner appealed to CA.
- June 14, 2004: CA affirmed CTA's decision.
- Petitioner filed appeal to SC.
- **ISSUE:**
 - Is the recording in the Official Registry Book of the BIR of the information filed by informer a mandatory requirement before taxpayer may be excluded from coverage of VAP?
- **SC DECISION:**
 - Yes. **Where the language of the law is clear and unequivocal, it must be given its literal application and applied without interpretation.**

CIR v. Julieta Ariete

- RMO 59-97, 60-97, and 63-97 consistently provided that “persons under investigation ... as a result of verified information filed by an informer under Sec 281 of the NIRC, **and** duly recorded in the Official Registry Book of the Bureau before the date of availment under VAP” are excluded from the coverage of the VAP. This denotes that in addition to the filing of verified information, the same should also be duly recorded in the ORB of BIR. The conjunctive word “and” is not without legal significance. It means “in addition to.” The word “**and**,” whether it is used to connect words, phrases or full sentences, must be accepted as binding together and as relating to one another. It implies conjunction or union.
- This interpretation is bolstered by the fact that BIR issued RR 18-2005 and reiterated the same provision in the implementation of the Enhanced VAP.
- **When a tax provision speaks unequivocally, it is not the province of a Court to scan its wisdom or its policy.** The more correct course of dealing with a question of construction is to take the words exactly what they say.
- **Findings of facts of the CTA are final and binding upon the SC, specially if these are similar findings of the CA, which is the final arbiter of questions of fact.**

FINAL ASSESSMENT NOTICE

- **ESSENTIAL REQUIREMENTS**

- There is an assessment. FAN (BIR FORM 17.08) contains name, address, and TIN; kind of tax; period covered; basic tax and penalties; date tax must be paid, while demand letter explains basis of assessment.
- **Must state facts, law, or jurisprudence; otherwise, assessment is void**
 - **A. *Pre-Subic Enron Power Corp (up to 2008)***
 - Taxpayer was fairly informed since it was able to categorically explain how assessment came about (*Toledo Power Co. vs. CIR*)
 - PAN has audit sheet but did not explain how assessment was arrived. Demand letter did not contain the information on law and facts (*HPCO Agridev Corp vs. CIR*)
 - **B. *Subic Enron Power Corp v. CIR (Jan, 2009)***: Basis is stated in the FAN.
- Signed by the Commissioner or his authorized representative
- Issued within the prescriptive period under the law or the extended period agreed upon between the parties
- Served by personal delivery or by registered mail to the proper person
- FAN is covered by a validly issued letter of authority

AVON PRODUCTS MFG v. CIR

- **FACTS**

- Taxpayer was issued PAN, to which it filed a Reply to PAN, explaining its objections against the proposed assessments and it submitted voluminous documents in support of its position.
- BIR issued the FAN, reiterating exactly the same findings in the PAN.

- **CTA EB DECISION**

- CTA ruled that the total disregard of explanations and documents presented by the taxpayer cannot be considered a **deprivation of due process**, since it was given the opportunity to present its side. It is the opportunity to be heard that makes up the essence of due process.
- While BIR has the duty to receive explanation and conjectures of taxpayer, it does not have the duty to accept them at face value. The determination of actual tax liability depends upon the **appreciation of evidence** presented to the BIR.
- In the absence of arbitrariness, the presumption is that the BIR made the assessment in good faith. What besets the taxpayer is not the lack of opportunity to present his side but rather the BIR's failure to appreciate the documents submitted by the taxpayer (*May 13, 2010*).

FINAL ASSESSMENT NOTICE

- **ASSESSMENT**

1. **FORMAL:** Formal assessment notice (FAN)
2. **INFORMAL:** Collection letter received by taxpayer within the prescriptive period, where taxpayer denied receipt of original demand letter and FAN (*Republic v. Nielson & Co*). This is treated as “substitute assessment,” and the 30-day period to file the protest starts from the date of receipt of the collection letter.

- **CASES NOT CONSIDERED ASSESSMENT**

- Letter from revenue officer granting opportunity to disprove findings (SHOW-CAUSE LETTER)
- Pre-Assessment Notice (PAN)
- Affidavit executed by revenue officers in support of criminal complaint filed with the DOJ against a taxpayer, showing a computation of deficiency taxes (*CIR v. Pascor Realty*)

FINAL ASSESSMENT NOTICE

- **FAN AND DEMAND LETTER MUST ALWAYS GO TOGETHER**
 - FAN alone does not comply with the requirements of Sec. 228 of the Tax Code
 - In some cases, “Details of Discrepancies” is attached to demand letter.
- **TAXPAYER OR HIS AUTHORIZED REPRESENTATIVE MUST RECEIVE ASSESSMENT NOTICE**
 - Actual receipt or constructive receipt
 - No assessment was served on the Estate as to the alleged under-payment of tax, the same having been served to a trustee, whose relationship with the trustor had been severed when the latter died. Absent this assessment, no proceedings could be initiated in court for the collection of said tax (*Estate of J. Diez vda de Gabriel v. CIR, 2004*).
- **CHANGE OF ADDRESS OF TAXPAYER**
 - Change of address must be communicated in writing to BIR; otherwise, prescriptive period is suspended.
- **DATE OF RECEIPT OF FAN**
 - Stamp date on envelope and face of FAN and Demand Letter

FINAL ASSESSMENT NOTICE

- **WHEN ASSESSMENT MUST BE ISSUED?**
 - **TAX RETURN FILED**
 - Not false or fraudulent (3 years from date of filing of return)
 - Each kind of tax has separate filing due date
 - False or fraudulent (10 years from date of discovery)
 - **NO TAX RETURN FILED**
- **WHEN ASSESSMENT IS MADE OR DEEMED MADE?**
 - **ISSUE DATE**
 - **DATE OF PERSONAL SERVICE, OR DATE OF RELEASE AND MAILING**
 - **DATE OF RECEIPT**
- **COUNTING OF PERIOD TO ASSESS**
 - **If assessment due date falls on a Saturday, the government has the next business day within which to assess** (*CIR v. Western Pacific Corp*)
 - **IN CASE OF LEAP YEAR.** -- EO 292 (Administrative Code of 1987), being the more recent law than Civil Code, governs the computation of legal period. Accordingly, a year shall be understood to be 12 calendar months; a month of 30 days, unless it refers to a specific calendar month (*CIR vs. Primetown Property Group, GR No. 162155, Aug 22, 2007*).

PROTEST LETTER

- **PROTEST LETTER MUST BE FILED WITHIN 30 DAYS FROM DATE OF RECEIPT OF ASSESSMENT**
 - **NATURE OF PROTEST**
 - **Request for reconsideration** (review will be made on the basis of arguments and documents already cited or submitted during the audit)
 - **Request for reinvestigation** (review will be made on the basis of additional arguments and documents that would be submitted during the protest period)
 - **DATE OF RECEIPT OF ASSESSMENT**
 - **CONTENTS OF PROTEST LETTER**
 - **FINDINGS TO WHICH TAXPAYER AGREES**
 - No action on protest will be made by BIR until admitted tax is paid by taxpayer
 - **FINDINGS TO WHICH TAXPAYER DOES NOT AGREE AND STATEMENT OF FACTS AND/OR LAW**
- **ABSENCE OF VALID AND TIMELY PROTEST MAKES ASSESSMENT RECEIVED BY TAXPAYER AS FINAL AND EXECUTORY**

CIR v. Enron Subic Power Corp

- **FACTS**

- BIR disallowed certain itemized deductions and considered some cost items as subject to 5% final tax on gross income earned, without indicating factual and legal bases. During the preliminary stage, BIR informed taxpayer thru preliminary 5-day letter and furnished copy of audit working paper.

- **SC RULING**

- Sec. 228 of the 1997 Tax Code provides that taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment is void.
- To implement such provisions, RR 12-99 provides that the letter of demand 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.
- The use of the word “**shall**” in the above legal provisions indicates the mandatory nature of the requirements laid down therein.
- In the issuance of FAN, the revenue officers did not provide Enron with written bases of the law and facts on which assessment is based. CIR did not bother to explain how it arrived at such assessment. He failed to mention the specific provision of the Tax Code or rules and regulations not complied with by Enron.

CIR v. Enron Subic Power Corp

- The 5-day letter and audit working papers were not valid substitutes for mandatory notice in writing of legal and factual bases of assessment. These steps were mere perfunctory discharge of CIR's duties in correctly assessing a taxpayer. The requirement for issuing a preliminary or final assessment, informing a taxpayer of the existence of deficiency tax assessment is markedly different from the requirement of what such notice must contain. Just because CIR issued an advice, preliminary letter and final notice does not necessarily mean that taxpayer was informed of the law and facts on which the assessment was made.
- **Law requires that the factual and legal bases be stated in the Demand Letter and Final Assessment Notice. Otherwise, the express provisions of Art. 228 of NIRC and RR 12-99 would be rendered nugatory.**
- Moreover, due to the absence of a fair opportunity to be informed of legal and factual bases of assessment, the assessment is void. Old law (1977 Tax Code) merely required taxpayer to be notified of assessment. This was changed (by 1997 Tax Code) in 1998 and the taxpayer must now be informed not only of the law but also of the facts on which the assessment is made. Such amendment is in keeping with the constitutional principle that no person shall be deprived of property without due process (*CIR vs. Enron Subic Power Corp, GR No. 166387, Jan. 19, 2009*).

CIR v. BPI

- **FACTUAL BACKGROUND:**

- **Oct 28, 1988** – CIR assessed petitioner for deficiency DST for 1986
- **Dec 10, 1988**, BPI replied stating “Your def assessments are no assessments at all... As soon as this is explained and clarified in a proper letter of assessment, we shall inform you of the taxpayer’s decision on whether to pay or protest the assessment.”
- **June 27, 1991**, BPI received letter from BIR, stating “.. Your letter failed to qualify as a protest under RR 12-85... still we obliged to explain the basis of the assessments.”
- **July 6, 1991**, BPI requested a **reconsideration** of assessments.
- **Dec 12, 1991**, BIR denied protest, which was received on Jan 21, 1992.
- The sentence “the taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.” was not in old Sec. 270 of 1977 Tax Code, but was only inserted in Sec. 228 in 1997 (R.A. 8424). **The inserted sentence was not an affirmation of what the law required; the amendment by RA 8424 was an innovation and could not be reasonably inferred from the old law.**
- The Oct 28, 1998 notices were valid assessments, which BPI should have protested within 30 days from receipt. The Dec 10, 1988 reply it sent to BIR did not qualify as a protest, since the letter itself stated “... we shall inform you of the taxpayer’s decision on whether to pay or protest the assessment.”
- BPI’s failure to protest the assessment made it final and executory. The assessment is presumed to be correct (*CIR v. BPI, GR 134062, Apr 17, 2007*).

Allied Banking Corp v. CIR

- **FACTS:**

- Apr 30, 2004: BIR issued PAN for deficiency DST and GRT for 2001 against FCDO of ABC.
- May 27, 2004: ABC filed protest against PAN received on May 18, 2004.
- July 16, 2004: BIR wrote Formal Letter of Demand with Assessment Notices.
- Aug 30, 2004: ABC received **demand letter**.
- Sept 29, 2004: **ABC filed petition for review with CTA**.
- Dec 7, 2004: CIR filed his Answer.
- July 28, 2005: CIR filed a Motion to Dismiss on ground that ABC failed to file administrative protest on demand letter with assessment notices.
- Oct 12, 2005: Motion to dismiss was granted. Motion for Reconsideration was filed by the taxpayer but was dismissed by the court.
- Feb 22, 2006: Appeal to CTA *en banc* made by the taxpayer, which affirmed decision of the CTA division.

Allied Banking Corp v. CIR

- **ISSUE:**

- Whether the Formal Demand Letter can be construed as a final decision of CIR appealable to CTA under RA 9282

- **SC DECISION:**

- **Petition is meritorious.** Pursuant to Sec 228 of the Tax Code, the proper recourse of petitioner was to dispute the assessment by filing an administrative protest within 30 days from receipt thereof. Petitioner did not protest the FAN with CIR. It filed petitioner for review with the CTA. If we strictly apply the rules, the dismissal of petition by the CTA was proper.
- However, **the instant case is an exception to the rule on exhaustion of administrative remedies** (i.e., estoppel on the part of the administrative agency concerned). The demand letter reads: “... This is our final decision based on investigation. If you disagree, you may **appeal this final decision** within thirty (30) days from receipt hereof, otherwise said deficiency tax assessment shall become final, executory and demandable.”
- In ***Oceanic Wireless Network v. CIR***, the Court considered the language used and the tenor of the letter sent to the taxpayer as the final decision of the CIR. In this case, petitioner disputed the PAN but not the FAN. Nevertheless, we

Allied Banking Corp v. CIR

- cannot blame petitioner for not filing a protest against the FAN since the language used and the tenor of the demand letter indicate that it is the final decision of the respondent on the matter.
- We cannot ignore the fact that in the demand letter, respondent used the word “appeal,” instead of “protest”, “reinvestigation”, or “reconsideration.” Although there was no direct reference to petitioner to bring the matter directly to the CTA, it cannot be denied that the word **“appeal”** refers to the filing of the petition for review with the CTA. As we see it then, petitioner merely took the cue from the respondent in appealing the demand letter to CTA.
- NOTE: Def taxes were compromised under RR 30-2002.

BPI v. CIR

- **FACTS**

- BPI, surviving bank after its merger with FEBTC, is a domestic corp.
- Nov 26, 1986 - Revenue Service Chief issued PAN to BPI.
- Nov 29, 1986 - BPI requested for details of amounts mentioned in PAN.
- **Apr 7, 1989 – FAN issued for deficiency WTAS (swap transactions) and DST for 1982 to 1986.**
- **Apr 20, 1989 – BPI filed protest and on May 8, 1989, filed supplemental protest.**
- Mar 12, 1993 – BPI requested for opportunity to submit additional documents on swap transactions.
- June 17, 1994 – BPI submitted Swap Contracts with the BIR.
- BPI executed several Waivers of Statute of Limitations, the last of which was effective until Dec 31, 1994.

BPI v. CIR

- **Aug 8, 2002** – BIR withdrew deficiency WT assessment, but reiterated def. DST assessment and ordered BPI to pay within 30 days from receipt. BPI received copy of decision on Jan 15, 2003.
- Jan 24, 2003 - BPI filed petition for review with CTA.
- Aug 31, 2004 – CTA denied petition for review and ordered BPI to pay deficiency DST.
- Sept 21, 2004 – MR filed which was denied for lack of merit in Resolution dated Feb 14, 2005.
- Mar 9, 2005 – BPI filed with CTA *en banc* Motion for Extension of Time to file petition for review.
- Mar 28, 2005 – Petition for review filed.
- Aug 15, 2006 – CTA ruled that BPI is liable for DST on its cabled instructions to its foreign correspondent bank and that prescription had not yet set in against the government.

BPI v. CIR

- **ISSUES**

- Whether the collection of deficiency DST is barred by prescription
- Whether BPI is liable for DST on its swap loan transactions

- **SC RULING**

- **Supreme Court grants petition of BPI.**

- The CIR had 3 years from date of assessment (**Apr 7, 1989**) or until Apr 6, 1992 within which to collect the deficiency tax. However, it was only on Aug 9, 2002 that CIR ordered BPI to pay. [NOTE: Under existing law, BIR has five (5) years from date of assessment to collect the tax.]

- **Sec. 320 of the Tax Code suspends the running of the Statute of Limitations when the taxpayer requests for a reinvestigation which is granted by the Commissioner.** In *BPI v. CIR*, GR No. 139736, Oct 17, 2005, SC emphasized the rule that the CIR must first grant the request for reinvestigation as a requirement for the suspension of the statute of limitations.

BPI v. CIR

- In ***Republic v. Gancayco***, the Court stated that the act of requesting a reinvestigation alone does not suspend the prescriptive period. The request should first be granted, in order to effect suspension.
- The burden of proof that the request for reinvestigation had been actually granted shall be on the CIR. Such grant may be expressed in its communications with the taxpayer or implied from the action of the CIR or his authorized representative in response to the request for reinvestigation.
- There is nothing in the records of the case which indicates, expressly or impliedly, that CIR had granted the request for reinvestigation filed by BPI. It was only thru the CIR, thru the OSG, argued for the first time that he had granted the request for reinvestigation.

PRESCRIPTION

- **PERIOD TO ASSESS DEFICIENCY TAX**
 - RETURN WAS FILED
 - Not false or fraudulent – 3 years from filing of return
 - False or fraudulent – 10 years from date of discovery of false or fraudulent return
 - NO RETURN WAS FILED: 10 years from date of discovery
- **PERIOD TO COLLECT ASSESSED TAX** – 5 years from the date of assessment
- **PERIOD TO FILE CRIMINAL ACTION** – Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.

PRESCRIPTION

- Internal revenue taxes may be assessed or collected after the ordinary prescriptive period, if before its expiration, both the Commissioner and the taxpayer have agreed in writing to its assessment and/or collection after said period. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.
- The running of the prescriptive periods for assessment and collection of taxes is suspended when the taxpayer requests for the reinvestigation which is granted by the Commissioner

(Sec. 223, NIRC)

PRESCRIPTION

- The waiver must be in the form prescribed in RMO 20-90. Among others, the waiver (a) must indicate a definite expiration date agreed upon with the CIR; and (b) it should state the date of acceptance by the BIR. Without the date, it cannot be determined whether the waiver was actually accepted before the expiration of the 3-year period to assess.
- The requirement to furnish taxpayer a copy of the waiver of statute of limitations is not only to give notice of existence of document but of also of the acceptance by BIR and perfection of the agreement *(Phil*

Journalists v. CIR, GR No. 162852, Dec 16,2004; FMF Dev Corp v. CIR).

DENIAL OF PROTEST

- **FORM OF DENIAL OF PROTEST**

- **DIRECT DENIAL**

- Revenue Regulations No. 12-99
 - The CIR should always indicate to taxpayer in clear and unequivocal language whenever his action on an assessment questioned by taxpayer constitutes his final determination on disputed assessment, as contemplated by Sec 7 and 11 of RA 1125. Without needless difficulty, taxpayer would be able to determine when his right to appeal to the tax court accrues (*CIR v. BPI, 2007*; *CIR v. Advertising Associates*; *CIR v. Union Shipping*).

- **INDIRECT DENIAL**

- **Final Notice Before Seizure** (*Isabela Cultural Corp vs CIR*)
 - Warrant of Dstraint and Levy or Warrant of Garnishment
 - Filing of civil action by BIR in the proper court
 - Referral to SOLGEN of case
 - **Inaction of Commissioner**
 - Lascona Land Co. vs. CIR (2000)

ADMINISTRATIVE APPEAL

- Decision of Regional Director on protest of taxpayer is not yet final; the same may be appealed to CIR, pursuant to Rev Regs No. 12-99.
- What is appealable to the CTA under Tax Code and RA 1125, as amended by RA 9282, is the decision of the CIR on the disputed assessment.
- Prior exhaustion of administrative remedies gives administrative authorities the opportunity to decide controversies within their competence (*Aguinaldo Industries Corp. v. CIR*) to correct action of subordinate officers and to notify government that such taxes have been questioned and should be borne in mind in estimating the revenue (*CIR v. Acosta, 2007*).

INACTION IS DEEMED DENIAL OF PROTEST

- If the Commissioner or his duly authorized representative fails to act on the taxpayer's protest within one hundred eighty (180) days from date of submission by the taxpayer of the required documents in support of his protest, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the lapse of the said 180-day period; otherwise, the assessment shall become final, executory and demandable *(Sec. 228, NIRC)*.
- The inaction of the Commissioner during the 180-day period, where a definite period is required by law to be made, shall be construed as a denial of the protest *(R.A. 9282, Apr 25, 2004)*.

INACTION IS DEEMED DENIAL OF PROTEST

- Since the petitioner did not submit any additional document (in a supplemental protest) in support of his protest within sixty (60) days from the filing of its protest, the counting of the 180-day period was from the filing of the (original) protest.
- Accordingly, when respondent (CIR) failed to render his decision within 180 days from the filing of the taxpayer's protest, petitioner has 30 days after the lapse of the 180-day period to file an appeal to CTA

(Oceanic Wireless Network vs. CIR, CTA Case No. 6111, Nov. 3, 2004)

Fishwealth Canning Corp v. CIR

- **FACTS:**

- CIR issued LA for 1999; investigation disclosed tax liability of P2.395 M, representing deficiency income tax, VAT, and WT.
- Aug 25, 2000: CIR reinvestigated petitioner's books covering the same period for which it issued *subpoena duces tecum*. Petitioner requested cancellation of *subpoena* on the ground that it had been examined.
- CIR subsequently filed criminal complaint when petitioner did not heed the *subpoena*, but it was dismissed for insufficiency of evidence.
- Aug 6, 2003: Respondent-CIR sent FAN (def income tax and VAT for P67.5 M for 1999), which was contested on Sept 23, 2003.
- Aug 2, 2005: Respondent issued Final Decision on Disputed Assessment, which was received on Aug 4, 2005. It stated “**if petitioner disagreed, it may appeal to CTA ...**”

Fishwealth Canning Corp v. CIR

- Sept 1, 2005: Petitioner filed **Letter of Reconsideration** (with the CIR), instead of appealing to CTA.
- Sept 6, 2005: BIR issued preliminary collection letter, demanding payment of taxes.
- Oct 20, 2005: Petitioner filed petition for review with CTA.
- In his Answer, respondent argued petition was filed out of time. First Division of CTA ruled in favor of BIR and dismissed the petition.
- Nov 21, 2006: Petitioner filed petition for review with CTA *en banc*, which upheld decision of the Division.
- Petitioner files appeal to SC.
- **ISSUE:**
 - Whether or not petition was filed out of time.

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- **SC DECISION:**

- **Petition was filed out of time.** Petitioner received denial of the protest on Aug 4, 2005. Under Sec. 228 of the Tax Code, it had 30 days from date of receipt of the denial of protest or until Sept 3, 2005. It filed appeal on Oct 20, 2005.
- A **motion for reconsideration** of the denial of the administrative protest does **not** toll the 30-day period to appeal to CTA.
- The criminal complaint (re *subpoena duces tecum*) was instituted not to demand payment, but to penalize the taxpayer for violation of the Tax Code.

CAP v. CIR

- **FACTS**

- Taxpayer filed timely protest against FAN issued by ACIR-LTS. ACIR-LTS subsequently denied the protest and issued Final Decision on Disputed Assessment (FDDA). Taxpayer filed request for reconsideration/reinvestigation of FDDA with ACIR-LTS. After submitting relevant documents in support of request for reconsideration/reinvestigation, taxpayer filed Petition for Review with CTA.

- **CTA DECISION**

- CTA ruled that since taxpayer filed request for reconsideration of the FDDA with ACIR-LTS (and not with the CIR), the FDDA is considered as the final decision, which is appealable to the CTA. The request for reconsideration did not toll the running of the 30-day period to appeal the FDDA to CTA. Considering that the petition was filed beyond the 30-day period from date of receipt of FDDA, the petition was denied (*College Assurance Plan Phils v. CIR, CTA EB No. 475, June 1, 2010*).

RCBC v. CIR

- Petitioner maintains that its counsel's neglect in not filing petition for review within the reglementary period (due to error of counsel's secretary) was excusable.
- The 30-day period to appeal is jurisdictional and failure to comply would bar the appeal and deprive the CTA of its jurisdiction. Such period is mandatory, and it is beyond the power of the courts to extend the same (*Chan Kian vs CTA, 105 Phil 906 (1959)*).
- The options granted to the taxpayer in case of inaction by the CIR is **mutually exclusive and resort to one bars the application of the other**. Petition for review was filed out of time (more than 30 days after the lapse of 180 days), and petitioner did not file Motion for Reconsideration or appeal; hence, disputed assessment became final and executory.

RCBC v. CIR

- After availing of the first option (filing petition for review with CTA due to inaction by the CIR on the protest), petitioner cannot successfully resort to the second option (awaiting final decision of CIR) on the pretext that there is yet no final decision on the disputed assessment because of CIR's inaction.
- Assessments are presumed to be correct, unless otherwise proven (*RCBC vs CIR, GR No. 168498, Apr 24, 2007*).

APPEALS

- JUDICIAL APPEAL
 - FINAL DECISION OF COMMISSIONER MAY BE APPEALED TO COURT OF TAX APPEALS
 - Where a taxpayer filed a valid protest within 30 days from date of receipt of assessment and on same day also filed with CTA a petition for review, there is yet no final decision of CIR on the protest that is appealable to CTA (*Moog Controls Corp vs. CIR, CTA Case No. 6700, Oct 18, 2004*)
 - CTA DIVISION DECISION IS APPEALED TO CTA *EN BANC* (RA 9282)
 - COURT OF APPEALS *EN BANC* DECISION IS APPEALED TO SUPREME COURT

- **PART III:**
- **REMEDIES AFTER PAYMENT OF TAX**
 - **REFUND OR TAX CREDIT**

REFUND OR TAX CREDIT

- Tax refund is in the nature of tax exemption which must be construed strictly against the taxpayer. The taxpayer must present convincing evidence to substantiate claim for refund (*FEBTC v. CIR, 2006*).
- The BIR must release refund without any unreasonable delay what it has erroneously collected. Fair dealing is expected by taxpayers from BIR (*CIR v. Acesite Hotel Corp, 2007*).
- 3 conditions for grant of refund of creditable withholding tax:
 - Claim is filed within 2 years from date of payment of tax;
 - Return shows income payment was declared as part of gross income; and
 - Fact of withholding is established by copy of statement duly issued by payor to the payee showing amount paid and amount of tax withheld therefrom (*Banco v. CIR, 2007*).
- 2-year period shall be counted from filing of final adjustment return (*CIR v. Primetown Property Group, 2007*). In case the tax account was paid on installment, the computation of the 2-year period should be from date of last installment (*Atlas Consolidated v. CIR, 2007*).

REFUND OR TAX CREDIT

- FACTS

- Administrative claim and judicial claim refund of excess input tax, covering the period July 1, 2002 to Sept 30, 2002, were simultaneously filed on Sept 30, 2004. Year 2004 is a leap year.

- DECISION

- Unutilized input tax must be claimed ***within two years after the close of the taxable quarter when the sales were made*** (Sec. 112(A) – Zero-rated or EZR sales). The above phrase refers to the application for refund/credit filed with the CIR, and not to appeals made to the CTA. Hence, administrative claim was timely filed.
- Sec. 204©) and 229 of NIRC are inapplicable, as both provisions apply only to instances of erroneous payment or illegal collection of internal revenue taxes.
- As between the Civil Code, which provides that a year is equivalent to 365 days, and the Administrative Code of 1987, which states that a year is composed of 12 calendar months, it is the latter that must prevail.
- Despite the timely filing of the administrative claim, **the court finds the filing of the judicial claim with the CTA as premature.** The taxpayer should have waited for the decision of the CIR or the lapse of the 120-day period.

REFUND OR TAX CREDIT

- **Sec. 112©** - *Period within which refund or tax credit of input taxes shall be made* - provides:
 - In proper cases, the CIR shall grant a refund or issue tax credit certificate for creditable input taxes within 120 days from date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.
 - In case of full or partial denial or inaction of CIR to act on the application within the period prescribed above, the taxpayer may, within thirty days from receipt of the decision denying the claim **or after the expiration of the 120-day period**, appeal the decision or the unacted claim with the CTA (*CIR v. Aichi Forging Company of Asia, G.R. No. 184823, Oct 6, 2010*).

- **END OF PRESENTATION**

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