

TAX RIGHTS AND REMEDIES OF COOPERATIVES

Atty. Vic C. Mamalateo

July 22, 2011

**Accountancy Week, Hotel
Intercontinental**

PART I

- **R.A. No. 9520: Philippine Cooperative Code of 2008**
 - Approved : February 17, 2009
 - Published in O.G., Vol. 105, March 23, 2009
- **RMC 12-2010, Feb 12, 2010**, circularizing the *Joint Rules and Regulations* implementing Sec. 60, 61 and 144 of RA 9520 between DOF Secretary and Chair, CDA
- **RMO 76-2010, Sept 27, 2010**, prescribing the policies and guidelines in the issuance of Certificate of Tax Exemption of Cooperatives

GENERAL PRINCIPLES ON TAXATION

- Laws shall have no retroactive effect, unless the contrary is provided (Art 4, NCC).
- Laws shall take effect after 15 days following the completion of their publication either in the Official Gazette, or in a newspaper of general circulation in the Philippines, unless it is otherwise provided (Art. 2, NCC).
- Tax exemptions are construed strictly against the taxpayer and liberally in favor of the government.

TYPES OF REMEDIES

- SUBSTANTIVE REMEDIES
 - Remedies provided for by law or regulation; an essential part or constituent or relating to what is essential
- PROCEDURAL REMEDIES
 - Remedies involving law of pleading, evidence, jurisdiction, etc.
- ADMINISTRATIVE REMEDIES
 - Remedies available at the administrative level; they are generally summary in nature; i.e., executed without ceremony or delay
- JUDICIAL REMEDIES
 - Remedies that are enforced thru judicial action, which may be civil or criminal

TAX RIGHTS UNDER R.A. 9520

- **Art. 60: Tax Treatment of Cooperatives**
 - Duly registered cooperatives under this Code which do **not** transact any business with non-members or the general public shall not be subject to any taxes or fees imposed under the NIRC and other tax laws.
 - Cooperatives not falling under this Article shall be governed by the succeeding section.

TAX EXEMPTIONS OF COOPS DEALING WITH MEMBERS ONLY

- Income tax (Title II of the Tax Code)
- VAT imposed (Title IV of the Tax Code)
- Percentage tax (Title V of the Tax Code)
- Donor's tax (Title III of the Tax Code) on donations to duly accredited charitable, research and educational institutions and reinvestment to socio-economic projects within the area of operation of the coop

TAX EXEMPTIONS OF COOPS DEALING WITH MEMBERS ONLY

- Documentary stamp tax (Title VII of the Tax Code), provided that if the other party is not exempt, it shall be the one directly liable for the tax
- Annual registration fee of P500 [Sec 236(B), NIRC]
- All taxes on transactions with insurance companies and banks, including the 20% or 7.5% FWT on interest on bank deposits
- Electric coops registered with the CDA shall be exempt from VAT on systems loss and VAT on revenues on distribution, supply, metering and lifeline subsidy of electricity to their members

TAX RIGHTS UNDER R.A. 9520

- **Art. 61: Tax and Other Exemptions**
 - Cooperatives transacting business with both members and non-members shall not be subject to tax on their transactions with members. In relation to this, transactions of members with the cooperative shall not be subject to any taxes and fees, including but not limited to final taxes of members' deposits and documentary stamp tax.
 - Notwithstanding the provisions of any law or regulation to the contrary, such cooperatives dealing with non-members shall enjoy the following tax exemptions:

TAX RIGHTS UNDER R.A. 9520

- 1. Cooperatives with accumulated reserves and undivided net savings of not more than P10 M shall be:
 - Exempt from all national, city, provincial, municipal or *barangay* taxes of whatever name and nature;
 - Exempt from customs duties, advance sales or compensating taxes (*replaced by the value added tax*) on their importation of machineries, equipment and spare parts used by them and which are not available locally as certified by the Dept of Trade and Industry. All tax-free importations shall not be sold nor the beneficial ownership transferred to any person until after five years; otherwise, the cooperative and the transferee or assignee shall be solidarily liable to pay twice the amount of the imposed tax and/or duties thereon.

TAX RIGHTS UNDER R.A. 9520

- 2. Cooperatives with accumulated reserves and undivided net savings of more than P10 M shall pay the following taxes at the full rate:
 - a. **Income Tax** – On the amount allocated for interest on capitals: *Provided*, That the same tax is not consequently imposed on interest individually received by members: *Provided, further*, That cooperatives, regardless of classification, are exempt from the income tax from the date of registration with the Authority;
 - b. **VAT** – On transactions to non-members: *Provided, however*, That all cooperatives, regardless of classification, are exempt from the payment of value added tax, subject to Sec 109, sub-sections L, M, and N of RA 9337, the NIRC, as amended:

TAX RIGHTS UNDER R.A. 9520

- *Provided*, That the exempt transaction under Sec 109(L) shall include sales made by cooperatives duly registered with the Authority organized and operated by its members to undertake the production and processing of raw materials or of goods produced by its members into finished or processed products for sale by the cooperative to its members and non-members: *Provided, further*, That any processed product or its derivative arising from the raw materials produced by its members, sold in the name and for the account of the cooperative, shall be deemed a product of the cooperative: *Provided, finally*, That at least 25% of the net income of the cooperative is returned to the members in the form of interest and/or patronage refunds;
- c. **All other taxes**, unless otherwise provided herein; and
- d. Donations to charitable, research and educational institutions and reinvestment to socio-economic projects within the area of operation of the cooperative may be tax deductible.

TAX RIGHTS UNDER R.A. 9520

- 3. All cooperatives, regardless of the amount of accumulated reserves and undivided net savings, shall be exempt from payment of local taxes and taxes on transactions with banks and insurance companies: *Provided*, That all sales or services rendered for non-members shall be subject to the applicable percentage taxes, except sales made by producers, marketing or service cooperatives: *Provided, further*, That nothing in this Article shall preclude the examination of the books of account or other accounting records of the cooperative by duly authorized internal revenue officers for internal revenue tax purposes only, after previous authorization by the Authority.

TAX RIGHTS UNDER R.A. 9520

- 4. A judge shall administer or acknowledge articles of cooperation and instruments of loan from cooperatives not exceeding P500,000, free of charge, in areas where there are no available notaries public.
- 5. A Register of Deeds shall accept for registration, free of charge, (a) any instrument relative to a loan not exceeding P250,000, or (b) the deeds of title of any property acquired by the cooperative, or (c) any paper or document drawn in connection with any action brought by the cooperative or with any court judgment rendered in its favor, or (d) any instrument relative to a bond of any accountable officer of a cooperative for the faithful compliance of its duties and obligations.

TAX RIGHTS UNDER R.A. 9520

- 6. Cooperatives shall be exempt from payment of all court and sheriff's fees payable to the Philippine Government for and in connection with all actions brought under this Code, or where such action is brought by the Authority before the court, to enforce the payment of obligations contracted in favor of the cooperative.
- 7. All cooperatives shall be exempt from putting up a bond for bringing an appeal against the decision of an inferior court or for seeking to set aside any third party claim: *Provided*, That a certification of the Authority of the net assets of the cooperative are in excess of the amount of the bond required by the court in similar cases shall be accepted by the court as a sufficient bond.
- 8. Any security issued by cooperatives shall be exempt from the provisions of the Securities Act, provided such security shall not be speculative.

TAXABILITY OF COOPS TO OTHER INTERNAL REVENUE TAXES

- All income of coops not related to the main/ principal business under its Articles of Cooperation shall be subject to all the appropriate taxes under the Tax Code. This is applicable to all types of coops, whether dealing purely with members or both members and non-members (Sec. 9, RMO 76-2010).
- All coops, regardless of classification, shall be subject to:
 - Capital gains tax from sale of shares of stock, or sale, exchange or other disposition of real property classified as capital asset;
 - DST on transactions of coops with non-members, except transactions with banks and insurance companies, provided that whenever one party to a taxable document enjoys DST exemption, the other party who is not exempt shall be the one directly liable for the tax;

TAXABILITY OF COOPS TO OTHER INTERNAL REVENUE TAX

- VAT billed on purchases of goods and services, except the VAT on importation by agricultural cooperatives of direct farm inputs, machines and equipment, including spare parts thereof, to be used directly and exclusively in the production and/or processing of their produce;
- Withholding tax on compensation income, except where an employee is a minimum wage earner, and creditable and final withholding taxes. All cooperatives are constituted as withholding agents.
- All other taxes for which coops are directly liable and not otherwise expressly exempted by any law.

TAX RIGHTS UNDER R.A. 9520

- **Sec. 62: Privileges of Cooperatives**
 - Deposit sealed cash boxes or containers, documents or any valuable papers in the safes of the municipal or city treasurer, free of charge;
 - Coops among government employees shall enjoy free use of available space in their agency, whether owned or rented by the government;
 - Coops rendering special types of services and facilities, such as cold storage, ice plant, electricity, transportation, and similar services and facilities shall secure franchise therefor, and shall open their membership to all persons qualified in their areas of operation;
 - Preferential right to supply government institutions and agencies rice, corn and other grains, fish and other marine products, meat, eggs, milk, vegetables, tobacco and other agricultural commodities produced by their members, where appropriate cooperatives exist;
 - Preferential treatment in the allocation of fertilizers, including seeds and other agricultural inputs and implements, and in rice distribution shall be granted to cooperatives by the appropriate govt agencies;

TAX RIGHTS UNDER R.A. 9520

- Preferential and equitable treatment in the allocation or control of bottomries of commercial shipping vessels in connection with the shipment of goods and products of cooperatives;
- Preferential rights in the management of public markets and/or lease of public market facilities, stalls or spaces, to be exercised exclusively by cooperatives, but not thru joint venture, partnership or other similar arrangement with non-cooperative entity;
- Credit cooperatives shall be entitled to loans, credit lines, rediscounting of their loan notes and other eligible papers with DBP, LBP, and other financial institutions, except BSP;
- Public transport service coop may be entitled to financing support for acquisition and/or maintenance of land and sea transport equipment, facilities and parts thru the program of the government financial institution. It shall have preferential right to the management and operation of public terminals and ports, whether land or sea transport where the cooperative operates;

TAX RIGHTS UNDER R.A. 9520

- Cooperatives shall be exempt from pre-qualification bidding requirements, notwithstanding the provisions of R.A. 9184, the Government Procurement Act;
- Privilege of being represented by the provincial or city fiscal or the Office of the Sol Gen, free of charge, except when the adverse party is the Republic of the Philippines;
- Coops organized by faculty members and employees of educational institutions shall have preferential right in the management of canteen and other services related to operation of educational institutions they are employed, provided they are operated within the premises of the educational institution;
- Appropriate housing agencies and government financial institutions shall create a special window for financing housing projects under by cooperatives, with interest rates and terms equal to, or better than those given for socializing housing projects.

PART II

- **POWERS OF COMMISSIONER OF INTERNAL REVENUE AND DUTIES OF TAXPAYERS UNDER THE 1997 TAX CODE**

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 (Sec 2, NIRC)
- **BIR OFFICIALS AND COLLECTING AGENTS**
 - BIR Commissioner and subordinate officials
 - BOC Commissioner and subordinate officials with respect to taxes on imported goods (VAT and excise tax)
 - Authorized agent banks (AAB) with contracts with BIR
 - Taxpayers (as withholding agents) [Sec 12, NIRC]

POWERS OF CIR

- To interpret tax laws and regulations, subject to review by the Secretary of Finance *(Sec. 4, NIRC)*
- To decide disputed assessments and to refund or credit taxes erroneously or illegally paid, subject to appeal to CTA *(Sec. 4, NIRC)*
- After the return has been filed, to examine books and records of taxpayers and to assess *correct* taxes. Failure to file return shall not prevent CIR from authorizing examination *(Sec. 5A, NIRC)*
 - When a report required by law is not forthcoming within the time fixed by law or rules, or there is reason to believe that such report is false, incomplete or erroneous, CIR shall assess *proper* tax based on **best evidence obtainable** *(Sec. 6(B), NIRC)*
 - In case a person fails to file required return or wilfully or otherwise files a fraudulent return, CIR shall Make or amend return from his own knowledge and from such information he can obtain, in the name of the taxpayer *(Sec 6(B), NIRC)*

POWERS OF CIR

- Any return or declaration filed in any BIR office shall not be withdrawn, but taxpayer may modify, change or amend the same within 3 years from date of filing, provided that no notice for audit of such return or declaration has been actually served upon the taxpayer in the meantime *(Sec. 6A, NIRC)*
- To terminate taxable period of taxpayer
- To make a canvass of taxpayers in the region or district
- To prescribe real property market values
- To accredit and register tax agents
- To inquire into bank deposit accounts of taxpayer, except to inquire into bank deposits of (a) a decedent to determine his gross estate; or (b) a person who filed application for compromise based on incapacity to pay *(Sec 6F, NIRC)*

POWERS OF CIR

- CIR may, at any time during the year, order inventory-taking of goods of any taxpayer as a basis for determining his tax liabilities, or place the business operations of any person under observation or surveillance, if there is reason to believe that such person is not declaring his correct income, sales or receipts. The findings may be used as basis for assessing taxes for the other months or quarters or the same or different taxable years and such assessment shall be deemed *prima facie* correct.
- When it is found that a person has failed to issue receipts and invoices, or there is reason to believe that his books and records do not correctly reflect the declarations or returns made, CIR may prescribe minimum amount of gross receipts or sales, and such amount so prescribed shall be *prima facie* correct for purposes of determining the tax liabilities of such person (Sec 6C, NIRC)

POWERS OF CIR

- To obtain information from persons who are not subject to tax audits (Sec 5B, NIRC)
- To issue *subpoena duces tecum* or *duces testificandum* (Sec 5C&D, NIRC)
- To delegate powers vested upon him to his subordinate officials with a rank of Division Chief or higher, except the following powers:
 - Power to recommend promulgation of rules and regulations by the Secretary of Finance
 - Power to issue rulings of first impression or to reverse, revoke or modify any existing ruling
 - Power to compromise or abate any tax liability, except regional assessments involving basic tax of P500,000 or less, and minor criminal violations
 - Power to assign or reassign revenue officers to establishments where articles subject to excise tax are produced or kept (Sec 7, NIRC)

POWERS OF CIR

- Any revocation, modification or reversal of any of the rules and regulations or rulings or circulars promulgated by CIR shall not be given retroactive application, if the revocation, modification or reversal will be prejudicial to the taxpayers, except in the following cases:
 - A. Where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the BIR; or
 - B. Where the facts subsequently gathered by BIR are materially different from the facts in which the ruling is based; or
 - C. Where the taxpayer acted in bad faith (Sec. 246, NIRC)

DUTIES OF TAXPAYERS

- To get Taxpayer Identification Number (TIN) (Sec. 236(J), NIRC)
- To register as a taxpayer – Income tax, Withholding agent, VAT or Non-VAT, etc. and to update BIR Certificate of Registration (Sec. 236(A), NIRC)
- To register books of accounts (whether computerized or manual) (Sec. 232, NIRC) and to keep books and records for 3 years from date of last entry (Sec. 235, NIRC)
- To secure Authority To Print (Sec. 238, NIRC) and to register and issue sales invoices (Sec. 237, NIRC), incl. delivery receipts, official receipts, incl. provisional receipts and acknowledgement receipts, and other accounting records (whether computerized or manual)
- To register cash register machines and POS machines
- To file tax returns and pay taxes within the dates prescribed by law; otherwise, penalties will be imposed
- To withhold and remit taxes required by law or regulations and to issue Certificates of Tax Withheld (BIR Form 2307)
- To submit reports and other information required by law or regulations (e.g., inventory, SLS and SLP, SAWT and MAP, alpha list of employees, audited financial statements, etc.)

PART III

- **TAX REMEDIES OF COOPERATIVES IN RELATION TO ASSESSMENT OF DEFICIENCY TAXES UNDER THE 1997 TAX CODE**

ASSESSMENT CYCLE

- Filing of tax return
- Tax audit by BIR
- Informal Conference
- Preliminary Assessment Notice (PAN)
- Reply to PAN
- Final Assessment Notice (FAN)
- 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
 - Cancell assessment
 - Deny protest
 - Revise assessment
- BIR INACTION
 - 180 days from filing of protest, or supplemental protest, if any
- Appeal to CTA
 - 30 days from date of receipt of denial of protest or lapse of 180 days
- Motion for Recon-CTA
 - 15 days from date of receipt
- Appeal to CTA *en banc*
 - 15 days from date of receipt
- Appeal to Supreme Court
 - 15 days from date of receipt

FILING OF RETURN AND PAYMENT OF TAX

- Self-assessment of tax (taxpayer determines his tax liability)
- Pay-as-you-file system (pay tax upon filing of tax return)
- Where to file return and pay tax?
 - Large Taxpayer (corporation): EFPS
 - Non-large taxpayer: RDO where principal place of business of taxpayer is located
 - Individual
 - Self-employed: RDO where principal place of business of taxpayer is located
 - Employee: Place of residence or employment
 - Real property transaction
 - RDO where real property is located (RR 8-98), unless seller or transferor is a Large Taxpayer, in which case, CAR/TCL shall be issued by LTO where it is registered (RR 4-2008). Beginning March 16, 2009, all transactions shall be done with the RDO where real property is located (RR 5-09).

DEADLINES FOR FILING OF TAX RETURNS AND PAYMENT OF TAX

- INCOME TAX
 - Quarterly Return -- RCIT: 60 days after end of quarter
 - -- Self-employed: Apr 15 and 45 days after EOQ
 - Annual Return -- 15TH day of fourth month of 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
- 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

INFORMAL CONFERENCE

- Revenue officers
 - Will present in an informal manner their findings to the taxpayer or his representative
 - Will verbally explain the source of information and the bases of their findings
 - May sign their findings
- Taxpayer may
 - Listen passively to the revenue officers
 - Explain his position or comment on the revenue officers' findings and submit documentary evidence
 - Ask for another informal conference to give a more detailed explanation to their findings
 - Request for breakdown of findings or source of the information from revenue officers as well as the factual or legal bases

PRE-ASSESSMENT NOTICE

- PAN and FAN are part of the due process requirement under the Constitution
- GENERAL RULE: PAN must be issued by BIR before issuing FAN and demand letter
- EXCEPTIONS:
 - 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
 - Violation of condition of tax-free importation *(Sec. 228, NIRC)*

CIR v. METRO SUPERAMA

- Taxpayer was assessed based on best evidence rule. BIR allegedly sent PAN for deficiency taxes which taxpayer denied. Taxpayer acknowledged receipt of FAN.
- Sec 228 of the Tax Code clearly requires that the taxpayer must first be informed that he is liable for deficiency taxes thru the sending of a Preliminary Assessment Notice (PAN). The law imposes a substantive, not merely a formal requirement.
- The sending of a PAN to taxpayer to inform him of the assessment made is part of the “due process requirement in the issuance of a deficiency tax assessment,” the absence of which renders nugatory any assessment made by the tax authorities.
- The due process requirement in the issuance of assessments is prescribed in Rev Regs No. 12-99. These are mandatory with the use of the word “shall” in the regulation in issuing Notice of Informal Conference, Pre-Assessment Notice, and Final Assessment Notice *(CIR v. Metro Superama, Inc, GR 185371, Dec 8, 2010).*

FINAL ASSESSMENT NOTICE

• ESSENTIAL REQUIREMENTS

- FAN (BIR FORM 17.08) contains name, address, and TIN; kind of tax; period covered; basic tax and penalties; date tax must be paid
- FAN and demand letter must state facts, law or jurisprudence; otherwise, assessment is void (*CIR v. Enron Subic Power Corporation, G.R. No. 166387, Jan. 19, 2009*)
 - 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*)
- Signed by 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
- FAN was issued on account of a valid letter of authority

BASF COATINGS + INKS PHIL v. CIR

- The running of the period to assess and collect shall be suspended, if taxpayer's whereabouts is not known, in order not to prejudice the government.
- However, SC notes that respondent was aware where petitioner may be located.
 - 1. Petitioner caused publication of Notice of Dissolution in Aug 22, 29 and Sept 5, 2001 issues of Malaya, which included address in Laguna of petitioner.
 - 2. Respondent conducted tax audit for 1999 at its Canlubang, Laguna address.
- The failure of BIR to note where to send PAN and FAN should not be taken against BASF. When the deficiency assessments were sent to **old** address despite proper notification of **new** address, the running of 3-year period to assess was not suspended.
- The law on prescription being a remedial measure should be interpreted in a way conducive to bringing about the beneficent purpose of affording protection to the taxpayer (*BPI v. CIR, GR 174942, Mar 7, 2008*).
- Due process requires that petitioner must actually receive the PAN and FAN (*Estate of Diez v. CIR; CIR v. Pascor Realty & Dev Corp*).

BASF COATINGS + INKS PHIL v. CIR

- As there are no notices sent to petitioner, assessments are void. In *CIR v. Reyes*, the SC ruled that if there is no valid notice sent, the assessment is void. The reason is that “the law imposes a substantive, not merely a formal requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations: that taxpayers should be able to present their case and adduce supporting evidence. xxx.”
- A void assessment cannot give rise to an obligation to pay deficiency taxes, and it divests the taxing authority of the right to collect them.

CIR v. Enron Subic Power Corp

- FACTS
- Enron is a domestic corporation registered with SBMA as freeport enterprise. It filed ITR for 1996 showing net loss of P7,684,948.
- BIR, thru preliminary 5-day letter, informed Enron of deficiency income tax assessment of P2,880,817.
- Enron disputed the proposed assessment in first protest letter.
- May 26, 1999, Enron received FAN from CIR and it protested the same on June 14, 1999.
- Due to non-resolution of protest within 180-day period, Enron filed petition for review in CTA. It argued the deficiency assessment disregarded Sec. 228 of Tax Code and Sec. 3.1.4 of RR 12-99, by not providing the legal and factual bases of assessment. It also questioned the substantive validity of the assessment.

CIR v. Enron Subic Power Corp

- Sept 12, 2001 - CTA granted Enron's petition and ordered cancellation of assessment which is void.
- Nov. 12, 2001 – MR of CIR was denied.
- CIR appealed to CA.
- CA affirmed decision of CTA. It held audit working did not substantially comply with Sec. 228 and RR 12-99 because they failed to show applicability of cited law to the facts of the assessment.
- MR filed by CIR was deemed abandoned when he filed motion for extension to file a petition for review with SC.
- ISSUE
- Whether or not Enron was informed of legal and factual bases of the deficiency tax assessment.

CIR v. Enron Subic Power Corp

- SC RULING
- Sec. 228 of 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

- In this case, 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 ruled above documents 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.

CIR v. Enron Subic Power Corp

- Law requires that they be stated in the Demand Letter and FAN. Otherwise, the express provisions of Art. 228 of NIRC and RR 12-99 would be rendered nugatory. The alleged "factual bases" in the advice, preliminary letter and audit working papers did not suffice.
- 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 merely required taxpayer to be notified of assessment. This was changed 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*).

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 IS ASSESSMENT MADE OR DEEMED MADE?**
 - **ISSUE DATE**
 - **DATE OF SERVICE OR MAILING**
 - Mere notation of mailing cannot suffice
 - Presumption in the course of mail
 - **DATE OF RECEIPT**
- **IF ASSESSMENT DUE DATE FALLS ON SATURDAY, GOVERNMENT HAS NEXT BUSINESS DAY WITHIN WHICH TO ASSESS** (*CIR v. Western Pacific Corp*)

PROTEST LETTER

- **PROTEST LETTER MUST BE FILED WITHIN 30 DAYS FROM DATE OF RECEIPT OF ASSESSMENT**
 - **NATURE OF PROTEST**
 - Request for reconsideration – based on evidence and arguments already submitted
 - Request for reinvestigation - based on new or additional evidence and arguments
 - **DATE OF RECEIPT OF ASSESSMENT**
 - **CONTENTS OF PROTEST LETTER**
 - **FINDINGS TO WHICH TAXPAYER AGREES**
 - No action on protest until admitted tax is paid
 - **FINDINGS TO WHICH TAXPAYER DOES NOT AGREE AND STATEMENT OF FACTS AND/OR LAW**

PROTEST LETTER

- **CONSEQUENCES OF ABSENCE OF VALID AND TIMELY PROTEST**
 - Makes assessment final and executory; merit of the case or validity of the assessment can not be raised by taxpayer
 - Appeal to CTA by taxpayer is no longer available or ineffective; CTA cannot acquire jurisdiction over the case; motion to dismiss may be filed by BIR
 - BIR may pursue collection of taxes and penalties, administratively and/or judicially
 - Compromise of assessment is still possible

CIR v. BPI

- **FACTUAL BACKGROUND:**
 - **Oct 28, 1988** – CIR assessed petitioner for def. percentage tax and 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.
 - **Feb 18, 1992**, BPI filed petition for review in CTA.
 - **Nov 16, 1995**, CTA dismissed petition for lack of jurisdiction; assessments had become final and unappealable.
 - **May 27, 1996**, CTA denied reconsideration.

CIR v. BPI

- On appeal, CA reversed CTA's decision. It ruled Oct 28, 1988 notices were not valid assessments because they did not inform the taxpayer of the legal and factual bases therefor. It declared the proper assessments were those in May 8, 1991 letter which provided the reasons for claimed deficiencies. CIR elevated case to SC.
- CIR did not inform BPI in writing of the law and facts on which assessments were made. He merely notified BPI of his findings, consisting of the computation of the tax liabilities and a demand for payment within 30 days from receipt. He relied on former Sec. 270, NIRC, prior to its amendment by RA 8424.
- In **CIR vs. Reyes**, GR 159694, Jan 27, 2006, the only requirement was for the CIR to "notify" or inform the taxpayer of his "findings." Nothing in the old law required a written statement to the taxpayer of the law and the facts. The Court cannot read into the law what obviously was not intended by Congress. That would be judicial legislation.

CIR v. BPI

- Jurisprudence simply required that assessments contain a computation of tax liabilities, the amount to be paid plus a demand for payment within a prescribed period.
- 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, 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, 1988 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 vs BPI, GR 134062, Apr 17, 2007*).

TECHNOPEAK CORP v. CIR

- While petitioner may have availed of tax amnesty under RA 9480 and correspondingly paid the amnesty tax, the same is clearly not a substitute for the formal protest provided for under the Tax Code in order to vest the CTA jurisdiction to declare the assessment null and void.
- As to the prayer of petitioner to determine propriety of tax amnesty, the same is covered within the meaning of “other matters arising under the Tax Code” mentioned under Sec. 7, RA 9282, amended RA 1125.
- A tax amnesty, much like a tax exemption, is never favored nor presumed in law. The grant of a tax amnesty, similar to a tax exemption, must be construed strictly against the taxpayer and liberally in favor of the taxing authority
(Technopeak Corp v. CIR, CTA Case No. 7751, Feb 26, 2010).

SUPPLEMENTAL PROTEST

- **Supplemental Protest**
 - **Filing of supplemental protest is directory**
 - **Submit supplemental protest containing**
 - **New or additional documentary evidence, jurisprudence, and legal defenses**
 - **Analyses or reconciliation of items questioned by revenue officers**
 - **Within 60 days from date of filing of protest letter**
 - **No request for extension to submit protest is necessary**

ADMINISTRATIVE APPEAL

- **DECISION OF REGIONAL DIRECTOR ON THE PROTEST IS NOT FINAL AND MAY BE APPEALED TO THE COMMISSIONER** *(Rev. Regs. No. 12-99)*
 - Remedy of taxpayer to the denial of protest is appeal to the CTA
 - Decision of CIR on disputed assessment is appealable to CTA, but CIR's power can be delegated to subordinate officials
 - Appeal to CTA necessitates payment of expensive filing fee and lawyer's professional fee
- **PRIOR EXHAUSTION OF ADMINISTRATIVE REMEDIES GIVES ADMINISTRATIVE AUTHORITIES THE OPPORTUNITY TO DECIDE CONTROVERSIES WITHIN THEIR COMPETENCE** *(Aguinaldo Industries Corp. v. CIR)*

DENIAL OF PROTEST

- **FORM OF DENIAL OF PROTEST**
 - **DIRECT DENIAL**
 - Revenue Regulations No. 12-99
 - CIR v. Advertising Associates
 - CIR v. Union Shipping
 - **INDIRECT DENIAL**
 - Final Notice Before Seizure *(Isabela Cultural Corp vs CIR)*
 - Warrant of Distrainment and Levy
 - Filing of civil action by BIR
 - Referral to SOLGEN of case
 - **Inaction of Commissioner**
 - Lascona Land Co. vs. CIR (2000)

FISHWEALTH CANNING CORP v. CIR

- Petitioner's administrative protest was denied by Final Decision on Disputed Assessment dated Aug 2, 2005, which was received by petitioner on Aug 4, 2005.
- Aug 31, 2005 -- Letter of Reconsideration of the denial of administrative protest was filed by petitioner with CIR.
- Sept 6, 2005 -- BIR issued Preliminary Collection Letter.
- Oct 20, 2005 – Petitioner appealed to CTA, but it dismissed petitioner for being filed out of time.
- Petitioner filed Motion for Reconsideration which was denied by CTA. Resolution was received on Oct 31, 2006.
- Nov 21, 2006, petitioner appealed to CTA en banc, which denied it.
- SC ruled that since the petition for review was filed before the CTA only on Oct 20, 2005, it was filed out of time. **An MR at the BIR level does not toll the 30-day period to appeal to CTA.**

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 APPEALED TO SUPREME COURT**

APPEAL TO CTA

- **Moog Controls Corp vs. CIR, CTA Case No. 6700, Oct 18, 2004**
 - 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.

- **Allied Banking Corp v. CIR, GR No. 175097, Feb 5, 2010**
 - Apr 30, 2004 -- BIR issued PAN.
 - July 16, 2004 – BIR wrote Formal Letter of Demand with Assessment Notices to ABC, which reads: “It is requested that the above deficiency tax be paid immediately upon receipt hereof, inclusive of penalties incident to delinquency. This is our final decision based on investigation. If you disagree, you may appeal the final decision within thirty days from receipt hereof, otherwise said assessment shall become final, executory and demandable.”

APPEAL TO CTA

- CTA has exclusive appellate jurisdiction to review by appeal “decisions of CIR in cases involving disputed assessments.” (RA 9282)
- The word “decisions” means decisions of the CIR on the protest of taxpayer against the assessment.
- Strictly speaking, the dismissal of the petition for review by CTA was proper. However, a careful reading of the demand letter and assessment notices leads us to agree with petitioner. The statement of the CIR led the petitioner to conclude that only a final judicial ruling in her favor would be accepted by the BIR.
- 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 filing of petition for review with CTA. As aptly pointed out by petitioner, the terms “protest,” “reinvestigation” and “reconsideration” refer to administrative remedies before the CIR.

LA FLOR DELA ISABELA v. CIR

- Mar 21, 2005 -- Petitioner received Formal Letter of Demand with attached deficiency tax assessments.
- Mar 30 and Apr 12, 2005 – Petitioner filed its protest and supplemental protest.
- **July 9, 2007** – Petitioner received Final Decision on Disputed Assessments.
- Oct 8, 2007 – Petitioner filed application for tax amnesty pursuant to RA 9480.
- Oct 18, 2007 – Petitioner filed application for compromise under Sec 204, NIRC.
- **Nov 29, 2007** -- Petitioner filed petition for review with CTA.
- Petitioner's failure to appeal within the 30-day period rendered the disputed assessment final, executory and demandable, thereby precluding it from interposing the defense of legality or validity of assessment. The assessment ceases to be a disputed assessment, and the same can no longer be contested by means of a disguised protest (*La Flor dela Isabela, Inc v. CIR, CTA Case 7709, Jun 9, 2010*).

RCBC v. CIR

- Petitioner maintains that its counsel's neglect in not filing petition for review within 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 lapse of 180 days), and petitioner did not file MR or appeal; hence, disputed assessment became final and executory.

RCBC v. CIR

- After availing of the first option (filing petition for review with CTA), 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)*.

ROYAL BANK OF SCOTLAND (PHIL) v. CIR

- The main difference between a request for reconsideration and a request for reinvestigation lies in the fact that if the protest is a request for reconsideration, the submission of additional or supporting documentary evidence is not required. Thus, in case of inaction of the CIR, the 180-day period for the BIR to resolve the protest shall be counted from the filing of the protest.
- If the protest is a request for reconsideration, the taxpayer is required to submit additional or supporting documents, and in case of inaction, the 180-day period shall be counted from the date of the submission of the supporting documents. If the taxpayer fails to submit said documents within the 60-day period, the assessment shall become final and executory.
- In this case, the protest is a request for reconsideration. Thus, the 180-day period should be reckoned from the date of filing of protest.

ROYAL BANK OF SCOTLAND (PHIL) v. CIR

- The right to appeal a decision of the CIR to the CTA is merely a statutory remedy, nevertheless the requirement that it must be brought within 30 days is jurisdictional. If a statutory remedy provides as a condition precedent that the action to enforce it must be commenced within a prescribed time, such requirement is jurisdictional. Thus, petitioner's failure to file a petition for review with the CTA within the 30-day period rendered the disputed assessment final and executory, thereby precluding it from interposing the defenses of legality or validity of the assessment and prescription of the government's right to assess (RCBC v. CIR, cited in Royal Bank v. CIR, CTA EB Case No. 446, Oct 23, 2009).

- **END OF PRESENTATION**

- **Atty. Vic C. Mamalateo**
- **Mobile No.: 0918-9037436**
- E-mail: vic.mamalateo@vcmlaw.com.ph
- vicmamalateo@yahoo.com
- Tel. No.: 3729224 Fax No.: 3729267