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TAX LAW FOR BUSINESS

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The New Rule on Waiver

A SPRING cannot rise higher than its source, and such is true when a revenue issuance deviates from the very Tax Code it seeks to implement.

In particular, Revenue Memorandum Order (RMO) 14-2016, which lays down the new rule on waivers, holds that a waiver is a "voluntary act of the taxpayer" and, as such, it "shall take legal effect and be binding on the taxpayer upon its execution." This new rule dispenses with the requirement of indicating the fact or date of receipt by the taxpayer of the waiver to show that the taxpayer was notified of the Bureau of Internal Revenue's (BIR) acceptance and perfection of the agreement. Oppositely, Section 222 of the Tax Code, defines a waiver as an "agreement." In the words of the Supreme Court, "A waiver is an agreement between the taxpayer and the commissioner, and not a unilateral act of either party." It is "a bilateral agreement."

RMO 14-2016 adopts a construction contrary to the explicit language of the Tax Code. The issuance treats the waiver as a "unilateral" contract on the part of the taxpayer on the assumption that the waiver is for the sole benefit of the taxpayer. A bilateral contract is one where each party promises to perform an act in exchange for the other party's act. A waiver is a bilateral agreement where the BIR promises to proficiently perform its duty in determining what the taxpayer rightly owes to the government in exchange for the taxpayer's waiver of the three-year prescriptive period for the commissioner of internal revenue to assess. The notion that a waiver is for the sole benefit of the taxpayer, making it a unilateral act, should be discredited. No less than the Supreme Court has said a waiver "is beneficial both to the government and to its

citizens; to the government because tax officers would be obliged to act promptly in the making of assessment, and to citizens because after the lapse of the period of prescription citizens would have a feeling of security against unscrupulous tax agents, who will always find an excuse to inspect the books of taxpayers, not to determine the latter's real liability, but to take advantage of every opportunity to molest peaceful, law-abiding citizens."

Likewise, RMO 14-2016 states that the taxpayer's mere accomplishment of the waiver will give rise to a perfected waiver, with legal and binding effect. This goes against the basic rule that an agreement or contract is perfected by mere consent, which is manifested by the concurrence of an offer and acceptance. And as our jurisprudence dictates, the "acceptance of an offer must be made known to the offeror," and "unless the offeror knows of the acceptance, there is no meeting of the minds of the parties, no real concurrence of offer and acceptance." Thus, contrary to the BIR's issuance, this means that there must be an actual agreement: the taxpayer agrees to waive and the BIR agrees to accept such waiver. Unless the BIR accepts, the offer of the taxpayer remains to be what it is—just an offer. In fact, during the period between the offer and the acceptance, the taxpayer has the right to withdraw the offer to extend the three-year period by communicating such withdrawal to the BIR. Now, if the BIR accepts the offer by signing the waiver, such act alone will not suffice. That is but a mere determination to accept the offer which does not, in any way, constitute a valid and binding waiver. It is only when the BIR's decision to accept the offer is communicated to the taxpayer, by returning the waiver to the taxpayer, will the waiver become a legal and binding commitment.

RMO 14-2016 may, thus, be considered contrary to the Tax Code, insofar as the issuance considers the waiver as a unilateral act and gives it legal and binding effect at the moment of its accomplishment by the taxpayer, without such offer meeting the acceptance and, further, without the acceptance being communicated to the taxpayer. To allow RMO 14-2016 to stand is to allow prolonged and unreasonable examinations, investigations and assessments against taxpayers.

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