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Period to serve Letters of Authority

Here cometh the taxman. With the reported revenue collection falling below target and with the lifting of the suspension on tax audits, the Bureau of Internal Revenue (BIR) is expected to step up its investigations and assessments on taxpayers. It is, thus, important for taxpayers to ensure that the audit or examination of their books and other accounting records are made pursuant to valid Letters of Authority (LOA).

Well-settled is the rule that all audits or investigations should be conducted with an LOA. In the case of Sony Philippines (G.R. No. 178697, November 17, 2010), the Supreme Court has said that "in the absence of such an authority, the assessment or examination is a nullity." While the absence of an LOA renders the assessment null and void, will a belatedly served, LOA have the same effect? Moreover, will a belatedly served, but subsequently revalidated, LOA nullify the assessment?

Based on existing regulations, the LOA must be served or presented to the taxpayer within 30 days from date of issue; otherwise, the said LOA shall be null and void unless revalidated.

In Dakay Construction and Development Corp. (Court of Tax Appeals [CTA] Case 8265, December 10, 2014), the LOA was issued on October 22, 2008, but served only on November 24, 2008, or on the 33rd day from its date of issue. The CTA Second Division ruled that an LOA served beyond the 30-day period does not automatically make it null and void if the same is revalidated. The Court noted that the LOA was revalidated, as can be seen on the face of the LOA with stamp “Revalidated on July 24, 2009”.

In another case, the LOA was issued on September 25, 2009, but was served only on October 26, 2009, or on the 31st day from its date of issue. Thus, in Carmona (CTA Case 8484, May 28, 2015), the CTA First Division ruled that, in the absence of revalidation, the BIR has no authority to assess the taxpayer.

Based on the foregoing cases, an LOA is not null and void even if belatedly served provided that the same is revalidated. It must be emphasized, however, that despite holding that an LOA served beyond the 30-day period is null and void unless revalidated, the court did not go beyond as to apply the Sony case and state that the assessment shall, likewise, be invalid.

The rule was so until the recent case of Dakay Construction and Development Corp. (CTA Case EB 1294, September 20, 2016). In the said case, the CTA en banc reversed the earlier decision of the CTA Second Division. The CTA en banc ruled that the 30-day period to serve the LOA on the taxpayer is a mandatory and due-process requirement. Thus, an LOA served beyond the prescribed 30-day period is invalid and has no force and effect. The court then unequivocally stated that, because of the belatedly served LOA, the audit or investigation conducted by the revenue officer was unauthorized, and that the assessment issued as a result thereof was, likewise, invalid.

The court also added that while an LOA may be revalidated, such revalidation will not revive the validity of the LOA, as well as the authority of the revenue officer to conduct an audit or investigation of the taxpayer’s book and other accounting records if, on the first place, the LOA was issued beyond the mandatory 30-day period.

The doctrinal value of this CTA en banc decision cannot be overstated. Clearly, a belatedly served LOA renders the assessment null and void, even if subsequently revalidated. Revalidation will not cure the defect occasioned by the failure to comply with the mandatory 30-day period to serve the LOA on the taxpayer. This means that should the BIR wish to pursue its audit or investigation, it cannot do so on the basis of an expired LOA. A new LOA must be issued and served on the taxpayer within the mandatory 30-day period.

Most significantly, it can be inferred from the CTA en banc decision that the failure of the taxpayer to receive the LOA, being a due-process requirement, shall, likewise, render the assessment null and void. A definitive ruling on this point should be forthcoming.

In any case, given this CTA en banc decision, taxpayers should be more circumspect in receiving LOAs from the BIR.

Taxpayers pay greater attention on the LOA's date of issue. If the LOA is being served beyond the 30-day period, the taxpayer has all the right to refuse the same.

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