



**TAX LAW FOR BUSINESS**  
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*BDB Law's "Tax Law for Business" appears in the opinion section of **Business Mirror** every Thursday.*

## Letter notice

AS so provided in the Tax Code, the powers of the commissioner include the authority to examine and issue assessments against taxpayers. The manner, however, in which this authority may be carried out is not specified. Among the common approaches used in determining the correctness of tax reporting is the so-called no-contact-audit-approach.

What is this "no-contact-audit-approach?"

As defined in the bureau's memorandum orders, the "no-contact-audit approach" includes the process of computerized matching of sales and purchases data contained in the schedules of sales and domestic purchases, and schedule of importation submitted by value-added tax taxpayers under the Relief System. This may also include the matching of data from other information or returns filed by the taxpayers with the BIR such as alpha list of payees subject to final or creditable withholding taxes. Thus, even without conducting a detailed examination of the taxpayer's books and records, the computerized/manual matching of sales and purchases/expenses may reveal discrepancies, which may be communicated to the concerned taxpayer through the issuance of letter notice (LN).

In short, LNs are discrepancies noted out of information obtained from third parties, which may eventually lead to the issuance of deficiency tax assessments. Taxpayers are usually required to reconcile the discrepancies. But there are inherent factors that make difficult the reconciliation of this information obtained from third parties with that of the taxpayer's records.

First, LNs are actually matching of information declared by third parties against the records or reports submitted by the taxpayer. And if there are differences, the burden is shifted to the taxpayer to prove the information gathered from third parties wrong and to prove his records correct. The reconciliation of the differences should not be passed on to the taxpayer. But that is what is actually happening. While it is a well-settled rule in taxation that assessments are prima facie presumed correct and made in good faith, this should find no application in an LN.

In a usual review of the taxpayer's records where the sources of data are the records of the taxpayer himself, the taxpayer may be faulted if he is unable to reconcile his own records. In an LN, however, which uses reports of other taxpayers or reporting agencies, the taxpayer should not be faulted if there are differences. It is unfair to the taxpayer if he is unable to disprove the correctness of the third-party source. In most cases, the third-party information is not at the taxpayer's disposal and not made available to him for his review and validation.

Second, there are usually timing differences in the reporting of the information. It is not unusual that the period upon which the taxpayer may have recognized the transaction is different from the period upon which its suppliers or customers reported the same transaction. Simply put, this timing difference usually results in discrepancy. The difference in the amount reported is captured in the LN but the timing of reporting is not. And since the reports made by the other parties are not available to the taxpayer, it makes the reconciliation process difficult, if not impossible.

The issuance of LNs may be an easier way of uncovering deficiencies in the reports made by some taxpayers. But this should only be used as a tool in determining which taxpayers should be subjected to examination, not as a source of the outright issuance of deficiency taxes. Deficiency-tax assessment should still be the result of an examination and not the result of mere comparison between the records of taxpayers with those of others. A taxpayer cannot be considered deficient in his tax payments simply because of the errors of others and simply because he can't point to those errors because of the unavailability of those third-party records.

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