



TAX LAW FOR BUSINESS  
Atty. Benedicta Du-Baladad

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## Oh, what a taxable year

THIS would be my last article for 2011, and I thought I should write something appropriate to end the year. Technical writings are always boring and I wouldn't like to spoil the lively spirit of Christmas. So I thought that a review of the important issuances in 2011 (a la "the year that was") would be good. So here is my assessment of the 2011 Taxable Year.

The year 2011 is an exciting but exhausting year to all of us—taxpayers, tax administrators, tax practitioners, and even the legislature and the judiciary. It made us all busy trying to cope with the successive changes—drastic and controversial changes—introduced by the new commissioner of the Bureau of Internal Revenue (BIR). Fortunately, the Court of Tax Appeals (CTA) seems to have less controversial decisions this year, thus enabling taxpayers to focus on the BIR changes.

Here is my ranking of the top five (5) most controversial issuances of the BIR in 2011.

1. The AIR (Additional Information Return) or SIR (Supplemental Information Return) requiring taxpayers to submit a detailed information of income subjected to a final tax or is exempt from tax, e.g., interest income, gain on sale of capital assets, gain on sale of listed shares, retirement and separation pays, proceeds of life insurance and etc. Individuals, including employees receiving more than P500,000 annually are covered.

Some of the major concerns raised against the AIR are: (1) It is tantamount to a forced waiver of the secrecy of bank deposits. (2) Administrative difficulty of compliance. (3) Data are already available with the BIR as payors of these incomes are required to report these income payments every month.

Status—Because of the outpouring of public outcry, Congress conducted successive public hearings. As a result, the BIR issued a revised circular making compliance optional for taxable year 2011. But it shall be mandatory for 2012 (which will begin this January).

As additional compliance, the BIR also require taxpayers effected to apply for printing of invoices with the BIR and to issue official receipts upon receipt of the income. In addition, they are required to keep books of accounts and record the income. Congress is closely monitoring this and is bent on having the issuance totally withdrawn or cancelled by the BIR.

2. The PEACe bond controversy which required the withholding of the 20-percent final tax on the discount/interest income earned from the bonds upon its maturity.

There are three major issues being raised against this, as follows: (1) Stability of rulings; (2) Erosion of investor's confidence; (3) Tax was imposed on persons who may not be the recipient of the income in full.

Status—At least eight big banks questioned the legality of the BIR ruling with the Supreme Court. But despite a temporary restraining order (TRO) issued by the Court, the BIR withheld the 20-percent final tax from the proceeds of the bonds upon maturity. The court case is ongoing.

3. The RATE (Run After Tax Evaders) cases. Not until this year has been shown the seriousness of the BIR running after tax evaders. The BIR has been consistently unrelenting in filing cases against erring taxpayers. Charges were made every other week and there was no blinking even if the cases involved high-profile personalities, powerful businessmen and politicians. Many are lauding the BIR for this effort, although, there is also fear that unwarranted charges may be made against innocent individuals. Likewise, there is concern that because of media publicity, innocent people may be considered convicted in public, thus unfairly damaging their reputation, their businesses and their family even before conviction in court.

Status—Ongoing. No final conviction was made so far.

4. VAT on toll. The BIR tried to impose VAT on toll contending that it is income received from the sale of service which is covered by the VAT system. The opponents, on the other hand, argued that toll is in the nature of a tax and a tax cannot be imposed on another tax. Likewise, there were concerns that it will increase prices of commodities. This issue was taken to the Supreme Court which ruled with finality that VAT can be imposed on toll.

Status—VAT is now being imposed on toll. However, there are reports that a bill has been filed in Congress exempting toll from VAT.

5. Voluntary contributions to SSS, GSIS, PHIC and Pag-ibig are not exempt from tax. The BIR clarified that only the mandatory contributions to these government institutions are exempt from tax. Any voluntary contribution made over and above the mandatory requirement is subject to income tax. In the case of employee contribution, it should not be deducted from his gross taxable compensation subject to withholding tax. In the case of the employer's contribution, it shall be considered as additional benefit or compensation to the employee subject to tax.

Status—Salaried individuals are objecting to this but the BIR has started enforcing since July of 2011.

There are more issues lined up and I can easily identify 10 more but I am running out of space.

Oh, what a taxable year, indeed!!!

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*The author is the managing partner and CEO of Du-Baladad and Associates Law Offices (BDB Law), a member firm of World Tax Services (WTS) Alliance.*

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