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TAX LAW FOR BUSINESS

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

Should substantial compliance be enough?

The Tax Code provides that a taxpayer shall be informed in writing of the law and the facts on which the assessment is made. This is also echoed in the regulations of the Bureau of Internal Revenue (BIR), which require that the assessment notices show in detail the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based.

In one case, the Supreme Court (SC) has said that this requirement is part of due process. It is not merely a procedural requirement but a substantive one because it determines the taxpayer's ability to protest. If the taxpayer is not informed of the factual and legal bases of the assessment, the assessment is void for violation of the taxpayer's right to due process.

The question now is whether it is strictly required that the factual and legal bases be stated in the assessment notices. Would the due-process requirement be complied with if the BIR informs the taxpayer of the factual and legal bases through exchange of correspondence and documents other than the assessment notices?

In one case decided by the SC back in 2009, the SC ruled that the advice of tax deficiency given by the BIR to an employee of the taxpayer, as well as the preliminary five-day letter and audit- working papers, were not valid substitutes for the mandatory notice in writing of the legal and factual bases of the assessment. The law requires that the legal and factual bases of the assessment be stated in the formal letter of demand and assessment notice.

However, in a 2014 case where the Formal Letter of Demand and final assessment notice were also not accompanied by a written explanation of the factual and legal bases of the deficiency taxes, the SC ruled that a prior exchange of correspondence and documents, including a response to the taxpayer's letter explaining at length the factual and legal bases, constitutes substantial compliance with the requirement that the taxpayer be informed in writing of the factual and legal bases of the deficiency-taxes assessment.

Further, in a more recent case, the SC reiterated the same and stated that the requirement of providing the taxpayer with written notice of the facts and the laws used as basis for the assessment is not to be mechanically applied. It is enough that the taxpayer is adequately informed of the basis of the assessment.

Considering the recent decisions of the SC, it appears that substantial compliance is enough provided that the taxpayer would, in the end, be informed in writing of the factual and legal bases of the assessment to enable him to make an effective protest. This should be revisited. It must be noted that it is the formal letter of demand and assessment notice that is being protested by the taxpayer. Thus, the said notice should contain all the factual and legal bases of the assessment so as to allow the taxpayer to intelligently and properly protest. As this is a due-process requirement, the same should be strictly complied with, and substantial compliance should not be permitted.

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