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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.*

Third-party information is not ironclad

IN many instances, tax examination includes findings of under-declaration of sales and/or purchases through the generated data from the Bureau of Internal Revenue's (BIR) Reconciliation for Listing and Enforcement (Relief) Integrated Tax System. In essence, it is a no-contact audit approach, whereby the BIR compares the sale or purchase declarations of the supplier and the customer. This method has been questioned by many taxpayers for being unfair because the wrong declaration of a supplier may result to an audit issue on the part of the customer and vice versa.

As guidelines, the Supreme Court explained in its decisions (213943 and 222743) that Relief system is a valid information-technology tool used by the BIR to improve tax administration. This is to support third-party information program and voluntary assessment program of the BIR through cross-referencing of third-party information. Through the consolidation and cross-referencing of third-party information, discrepancy reports on sales and purchase can be generated to uncover underdeclared income and over claimed purchases. Thus, timely recognition and accurate reporting of unregistered taxpayers and nonfilers can be possible.

While the SC recognized the validity of the system using third- party information, the Court of Tax Appeals (CTA), in its long line of cases, have ruled that in order to stand the test of judicial scrutiny, the assessment must be based on actual facts. The presumption of correctness of assessment being a mere presumption cannot be made to rest on another presumption. Hence, assessment should not be based on mere presumptions no matter how reasonable or logical said presumptions may be.

In fact, as regards the imposition of assessment of income tax, the CTA already clarified in its decision (8345) that it must be clear that there was an income, and such income was received by the taxpayer, not when there is underdeclaration of expenses. As such, the three elements in the imposition of income must be present. First, there must be gain or profit. Second, the gain or profit is realized or received, actually or constructively. And third, it is not exempted by law or treaty from income tax.

Similarly, in the recent decision of the CTA (1463), the latter clarified that finding of the BIR using Relief system may still be assailed by the concerned taxpayer. The CTA ruled that the assessment must fail if the taxpayer shall be able to prove that the sole basis of assessment is an unverified and unauthenticated document, without any support of externally sourced data and that the discrepancy between the amounts appearing in tax returns was the result only of an erroneous posting committed by the withholding agent.

Noticeably, with the advent of technology, the call for tax compliance has risen to another level. The BIR has adopted tools and processes that provide frameworks for immediate detection of discrepancies. However, as earlier mentioned, the Relief system is not ironclad. Thus, on a final note, it is hoped that these tools must be used with caution to minimize injury to the propriety rights of a taxpayer.

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