The Power to Tax is not a Power to Destroy

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I. INTRODUCTION

The power to tax, to borrow from Justice George A. Malcolm, "is an attribute of sovereignty."[1] It is indeed one of the strongest and most essential powers of government.[2] Today, with the increased government spending necessary to address the challenges brought by the COVID-19 pandemic[3] and Typhoon

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1. Sarasola v. Trinidad, 40 Phil. 252, 262 (1919).
2. *See id.*
3. Ben O. de Vera, *Gov't ramps up spending to fight COVID-19*, PHIL. DAILY INQ., Sept. 10, 2020, *available at* https://business.inquirer.net/306978/govt-ramps-up-spending-to-fight-covid-19 (last accessed Jan. 8, 2021) [https://perma.cc/2KEY-AHXN].

Ulysses in the last quarter of 2020,[4] it is well-expected that the government's strong arm of taxation will be felt even more so. While the International Monetary Fund's Fiscal Affairs Department forecasts "a major decline in tax revenue in most countries[,]"[5] it will have to be business as usual for the Bureau of Internal Revenue (BIR). As a developing country, the Philippines will be taking a more aggressive stance in its tax investigations to ensure proper collection of the taxes legally due to the government.

In earlier times, this may have triggered alarm, as demonstrated by Chief Justice John Marshall's dictum in 1819 that "the power to tax involves the power to destroy[.]"[6] However, in recent years, a paradigm shift has been observed, reinforcing Justice Oliver Wendell Holmes, Jr.'s strong hand statement that "[t]he power to tax is not the power to destroy while this [c]ourt sits."[7] This shift is certainly attributable to the decisions of the learned Justices of the Philippine Supreme Court and of the Court of Tax Appeals (CTA) who have become the gatekeepers requiring strict observance of the due process rights of every taxpayer.

Revenue Regulation No. 12-99 (RR 12-99),[8] as amended, primarily governs the manner by which Internal Revenue Officers (Revenue Examiners/Officers) may validly issue a deficiency tax assessment.[9] RR 12-99 contains a list of the basic administrative due process requirements to be

4. Christian Deiparine, *'Ulysses' cost of damage now at ₱12.9 billion*, PHIL. STAR, Nov. 22, 2020, *available at* https://www.philstar.com/headlines/2020/11/22/2058624/ulysses-cost-damage-now-p129-billion#:~:text=MANILA%2C%20Philippines%20—%20The%20total%20cost,the%20NDRRMC%20showed%20on%20Sunday (last accessed Jan. 8, 2021) [https://perma.cc/Q8RQ-2ZMF].

5. *See* International Monetary Fund, Challenges in Forecasting Tax Revenue, at 1, *available at* https://www.imf.org/~/media/Files/Publications/covid19-special-notes/en-special-series-on-covid-19-challenges-in-forecasting-tax-revenue.ashx (last accessed Jan. 8, 2021) [https://perma.cc/BU5F-BM6B] (emphasis omitted).

6. McCulloch v. Maryland, 17 U.S. 316, 431 (1819).

7. Panhandle Oil Co. v. Mississippi ex Rel. Knox, 277 U.S. 218, 223 (1928) (J. Holmes, dissenting opinion).

8. Bureau of Internal Revenue, Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty, Revenue Regulation No. 12-99 [RR No. 12-99] (Sept. 6, 1999).

9. *Id.*

afforded to each taxpayer.[10] RR 12-99 was issued by the Department of Finance (DOF) to implement the provisions of the National Internal Revenue Code (NIRC)[11] relating to the power of the Commissioner of Internal Revenue (CIR) or his duly authorized representative to issue an assessment against a taxpayer.[12]

While RR 12-99 enumerates only four stages of the due process requirements in the issuance of a deficiency tax assessment,[13] the Author highlights that there are actually seven stages of the tax administrative due process which should be observed. These are: (1) actual service of a valid Letter of Authority (LOA); (2) conduct of an actual audit; (3) issuance, service, and discussion on the Notice of Discrepancy (NoD); (4) issuance and service of a Preliminary Assessment Notice (PAN); (5) issuance of the Formal Letter of Demand (FLD) and Final Assessment Notice (FAN); (6) action on Administrative Protest; and finally, the (7) issuance and service of the Final Decision on Disputed Assessment (FDDA) — which will ultimately be appealable to the CIR or to the CTA.[14]

II. ACTUAL SERVICE OF VALID LETTER OF AUTHORITY

It is a principal rule that all tax audits and investigations should be conducted under a valid Letter of Authority (LOA).[15] A LOA is a document notifying a taxpayer of the conduct of audit or investigation, which may be due to certain discrepancies or inconsistencies in its filed returns, thus giving rise to a need to inspect or examine the taxpayer's books of account.[16] The LOA is the evidence of the CIR's or Regional Director's authority granted to Revenue Examiners to perform assessment functions.[17] "It empowers ... [the] said

10. *Id.* § 3.

11. An Act Amending the National Internal Revenue Code, as Amended, and For Other Purposes [NAT'L INTERNAL REVENUE CODE], Republic Act No. 8424 (1997) (as amended).

12. *Id.* § 6 & RR No. 12-99, § 1.

13. RR No. 12-99, § 3.

14. Bureau of Internal Revenue, Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment, Revenue Regulation No. 18-2013 [RR No. 18-2013], § 2 (Nov. 28, 2013).

15. NAT'L INTERNAL REVENUE CODE, § 13.

16. *See id.*

17. Commissioner of Internal Revenue v. Sony Philippines, Inc., G.R. No. 178697, 635 SCRA 234, 242 (2010) (citing NAT'L INTERNAL REVENUE CODE, § 13).

[R]evenue [E]xaminer[s] to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax."[18]

The CIR has issued guidelines prescribing the policies in the issuance of the LOA,[19] which include the following:

(1) The LOA should indicate the: (a) name of the taxpayer, (b) the address of the taxpayer, (c) the names of the Revenue Officers to whom the audit is assigned which includes a group supervisor and two revenue examiners, (d) the taxable period covered, and (e) the kind of tax to be audited.[20]

(2) It should only cover a taxable period not exceeding one taxable year.[21] The practice of issuing a LOA covering audit of "unverified prior years" is prohibited.[22] Any assessment issued outside the period specified in the LOA is void.[23]

(3) It should be prepared and signed by the Regional Director of the specific Revenue District Office where the taxpayer is registered.[24]

(4) Since 2010, the BIR can only issue electronic versions of letters of authority (eLOA).[25] A manually prepared LOA is no longer permitted.[26] All LOAs must be registered in the BIR's Letter of Authority Monitoring System.[27]

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18. *Id.*

19. Bureau of Internal Revenue, Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit, Revenue Memorandum Order No. 43-90 [RMO No. 43-90] (Sept. 20, 1990).

20. *Id.* § D (2).

21. *Id.* § C (3).

22. *Id.*

23. *See, e.g.*, Commissioner of Internal Revenue v. Lancaster Philippines, Inc., G.R. No. 183408, 831 SCRA 1, 21 (2017).

24. *See* RMO No. 43-90, § D (2).

25. Bureau of Internal Revenue, Electronic issuance of Letters of Authority, Revenue Memorandum Order No. 44-2010, [RMO No. 44-2010] (May 12, 2010).

26. *Id.* ¶ IV (2).

27. *See id.* ¶ I.

(5) The LOA shall be served by any one of the Revenue Officers whose names appear on the LOA.[28]

(6) The LOA should be served by the Revenue Officer assigned to the case and no one else.[29] He should have the proper identification card and should be in proper attire.[30]

(7) The LOA must be served or presented to the taxpayer within thirty (30) days from its date of issue; otherwise, it becomes null and void.[31] The taxpayer has all the right to refuse its service.[32]

(8) LOAs which were not completed within the prescribed period of audit generally cannot be revalidated.[33] In fact, the failure of the Revenue Officers assigned to complete the audit within the prescribed period exposes them to administrative sanctions.[34]

The CIR recently issued Revenue Memorandum Circular No. 110-2020 (RMC 110-2020) reminding Revenue Officers of the requirement that the taxpayer must be properly served with the LOA.[35] The CIR requires that the taxpayer should be served by personally delivering a copy at his or her registered or known address, or other address where the taxpayer may be found.[36]

It is only in cases where the concerned taxpayer cannot be found in the registered address that substituted service may be resorted to.[37] RMC 110-2020 requires Revenue Officers to observe the following in case of substituted service:

28. *Id.* ¶ IV (5).

29. Bureau of Internal Revenue, Updated Handbook on Audit Procedures and Techniques Volume I (Revision — Year 2000), Revenue Audit Memorandum Order No. 01-00 [RAMO No. 01-00], § VIII (C) (2) (2.1) (Mar. 17, 2000).

30. *Id.*

31. *Id.* § VIII (C) (2) (2.3).

32. *Id.*

33. *See* RMO No. 44-2010, § IV (8).

34. *Id.*

35. Bureau of Internal Revenue, Clarifications on the Proper Modes of Service of an Electronic Letter of Authority, Revenue Memorandum Circular No. 110-2020 [RMC 110-2020] (Sept. 24, 2020).

36. *Id.* ¶ 1.

37. *Id.* ¶ 2.

(1) "The [LOA] may be left at the [taxpayer's] registered address, with [the taxpayer's] clerk or a person having charge thereof."[38]

(2) "If the known address is a place where [the taxpayer's] business activities ... are conducted, the [LOA] may be left with [the] clerk or with a person having charge thereof."[39]

(3) "If the known address is a place of residence, ... [the LOA may be left] with a person of legal age residing therein."[40]

(4) "If no person is found in the [ ] registered or known address [or the taxpayer refuses to receive the LOA,] the concerned Revenue Officer [ ] shall bring a barangay official and two disinterested witnesses ... so that they may personally observe and attest to such absence or refusal."[41] "The original copy of the [LOA] shall be given to the barangay official."[42]

The date of receipt, name, and signature of the person acknowledging receipt or barangay officials/witnesses, as applicable, should be reflected in the duplicate copy of the LOA left in the records of the BIR.[43]

While the requirement of a LOA is not expressed in RR 12-99, it must be emphasized that the said regulation was issued to implement Section 6 (A) of the NIRC.[44] The title and contents of Section 6 (A) clearly show that it is only the CIR who has been empowered by law to authorize the examination of any taxpayer and to make an assessment of the correct amount of tax to be paid —

> Section 6. Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. —
>
> (A) Examination of Return and Determination of Tax Due. After a return has been filed as required under the provisions of this Code, *the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax*, notwithstanding any law requiring the prior authorization of any government agency or instrumentality:

38. *Id.* ¶ 2.1.1.

39. *Id.* ¶ 2.1.2.

40. *Id.* ¶ 2.1.3.

41. RMC 110-2020, ¶¶ 2.1.4 & 2.1.5.

42. *Id.*

43. *Id.* ¶ 4.

44. RR No. 12-99, § 1.

> *Provided*, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.[45]

The above is complemented by Section 10 (c), specifically on the authority of the Regional Director to issue the LOA.[46]

Further, in implementing RR 12-99, the BIR must observe the provisions of the NIRC, particularly Section 13 thereof.[47] It clearly provides that a Revenue Officer must be authorized by a duly issued LOA —

> Section 13. Authority of a Revenue Officer. — Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, *a Revenue Officer assigned to perform assessment functions in any district may, pursuant to a Letter of Authority issued by the Revenue Regional Director, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due* in the same manner that the said acts could have been performed by the Revenue Regional Director himself.[48]

In the doctrinal case of *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*,[49] penned by Associate Justice Bienvenido L. Reyes, the Supreme Court declared a deficiency assessment void for having been issued without a valid LOA.[50] In the said case, the CIR only issued a Letter Notice (LN) to the taxpayer[51] advising of discrepancies found through the BIR's Reconciliation of Listing for Enforcement System (RELIEF System).[52] Thereafter, the

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45. NAT'L INTERNAL REVENUE CODE, § 6 (A), para. 1 (as amended) (emphasis supplied).

46. *Id.* § 10 (c).

47. *See id.* § 13.

48. *Id.* § 13 (emphasis supplied).

49. Medicard Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 222743, 822 SCRA 444 (2017).

50. *Id.* at 463.

51. *Id.* at 448.

52. In *Medicard Philippines, Inc.*, there was a short discussion on the RELIEF System adopted by the BIR as follows —

> With the advances in information and communication technology, the BIR promulgated RMO No. 30-2003 to lay down the policies and guidelines once its then incipient centralized Data Warehouse (DW) becomes fully operational in conjunction with its Reconciliation of Listing for Enforcement System. This system can detect tax leaks by matching the data available under the BIR's Integrated Tax System (ITS) with data gathered from third-party sources. Through the

Revenue Officers proceeded to issue a Preliminary Assessment Notice (PAN) and a Formal Assessment Notice (FAN) against the taxpayer.[53] Despite the LN being issued by the CIR, the Supreme Court held that the LN cannot be converted or take the place of the LOA required under the law even if the same was issued by the CIR himself.[54] Under existing regulations, the LOA itself was strictly required.[55] The Supreme Court noted that under the applicable rules issued by the CIR himself, an LN is merely a notice of audit or investigation only for the purpose of disqualifying the taxpayer from amending his returns.[56]

Thus, unless authorized by the CIR himself or by the concerned Regional Director through a LOA, an examination of the taxpayer cannot ordinarily be undertaken, nor can a deficiency assessment be issued.[57] In the absence of such authority, the assessment or examination is *void*.[58]

III. CONDUCT OF AN ACTUAL AUDIT

An assessment must always be based on facts.[59] A Revenue Officer is required to conduct an actual examination of the taxpayer's records where all his transactions and results of operations are reflected.[60] Under Revenue Audit Memorandum Order No. 01-00 (RAMO 01-00),[61] the Revenue Officer's

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> consolidation and cross-referencing of third-party information, discrepancy reports on sales and purchases can be generated to uncover under declared income and over claimed purchases of goods and services.

Id. at 456 (citing Bureau of Internal Revenue, Guidelines and Procedures in the Extraction, Analysis, Disclosure/Dissemination, Utilization, and Monitoring of RELIEF data for Audit and Enforcement Purposes, Revenue Memorandum Order No. 30-03, [RMO No. 30-03] § II (Sept. 18, 2003)).

53. *Medicard Philippines, Inc.*, 822 SCRA at 448.

54. *Id.* at 461.

55. NAT'L INTERNAL REVENUE CODE, § 13.

56. *Medicard Philippines, Inc.*, 822 SCRA at 461.

57. *Id.* (citing *Sony Philippines, Inc.*, 635 SCRA at 243).

58. *Medicard Philippines, Inc.*, 822 SCRA at 463 (emphasis supplied).

59. *See* Collector of Internal Revenue v. Benipayo, G.R. No. L-13656, 4 SCRA 182, 185 (1962).

60. *See* NAT'L INTERNAL REVENUE CODE, § 232 (A).

61. Bureau of Internal Revenue, Updated Handbook on Audit Procedures and Techniques Volume I (Revision — Year 2000, Revenue Audit Memorandum Order No. 01-00 [RAMO No. 01-00] (Mar. 17, 2000).

responsibility is *two-fold*.[62] His responsibility is not only directed to the Philippine Government, but also extends to the interests of the taxpayer under audit.[63] Revenue Officers are thus required to observe the following General Standards:

> (1) An impartial mental attitude must be maintained in all affairs relating to an examination in order to assure a fair application of tax laws, regulations and rulings.
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> (2) Professional skill and ingenuity must be exercised in the performance of the examination and the preparation of the report.
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> (3) Issues should be raised only when, in the Revenue Officer's opinion, they have real merit and only when they will contribute in the proper determination of tax liability.
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> (4) The confidential nature of all information pertaining to any assignment must be strictly observed.[64]

Further, the CIR requires that audits should be performed at the taxpayer's place of business because of the accessibility of the books and records and to permit actual observation of the taxpayer's facilities and scope of operations.[65] Otherwise, it should be performed in the office of the BIR.[66]

In case of online meetings or conferences, the CIR has recently issued a circular requiring that the Revenue Officers must only use the prescribed BIR email address[67] and must be pre-approved by the Revenue District Officer (RDO) or Regional Office.[68] The meeting must also be arranged through the BIR eAppointment or submitted a duly accomplished BIR Virtual Meeting Agreement for those BIR offices with no BIR eAppointment Facility.[69] The meetings are treated as strictly confidential and "[a]ny unauthorized recording

62. *Id.* § VII (emphasis supplied).

63. *Id.*

64. *Id.* § VII (A).

65. *Id.* § VII (C) (1).

66. *Id.*

67. Bureau of Internal Revenue, Policies and Guidelines in the Conduct of Online Meetings/Conferences with Taxpayers, Revenue Memorandum Circular No. 130-2020 [RMC 130-2020], ¶ II (2) (Oct. 20, 2020).

68. *Id.* ¶ II (3).

69. *Id.* ¶ II (6).

or disclosure may be subject to [ ] criminal, civil[,] and administrative liability."[70]

The following is the general process stated under RAMO 01-00: (a) arranging for an appointment; (b) serving of the LOA; (c) requesting for accounting records specifying the records to be assembled for examination; (d) initial interview; (e) preliminary evaluation of records; (f) application of examination techniques; (g) evaluation of internal control; (h) sampling techniques; and (i) preparation of the conclusions covering the sampling.[71]

The DOF has effectively modified the aforementioned process with the issuance of Revenue Regulation No. 22-2020 (RR 22-2020).[72] It has now reversed the process where the taxpayer is required to instead reply to the Notice of Discrepancy (NOD).[73] This may have been demanded by the current pandemic and may be the new norm of audit. Regardless of the process, it is important that the Revenue Officers substantiate their findings with facts, and not mere inuendo.[74] The features of RR 22-2020 will be further discussed under the relevant sub-heading below.

Complications in tax audits usually include the Revenue Officer's appreciation of the taxpayer's accounting methods. In one case, the Supreme Court observed that "although closely related, tax and business accounting had invariably produced concepts that at some point diverge in understanding or

70. *Id.* ¶ II (7).

71. RAMO No. 01-00, § VIII (C).

72. Bureau of Internal Revenue, Amending Certain Sections of Revenue Regulations No. 12-1999, as Amended by Revenue Regulations No. 18-2013 and Revenue Regulations No. 7-2018, Relative to the Due Process Requirement in the issuance of a Deficiency Tax Assessment, Revenue Regulation No. 22-2020 [RR No. 22-2020] (Sept. 15, 2020).

73. *Id.* § 2.

74. *See* Commissioner of Internal Revenue v. Enron Subic Power Corporation, G.R. No. 166387, 576 SCRA 212, 218 (2009). The Supreme Court held that "the taxpayer must [ ] be informed not only of the law but also of the facts on which the assessment is made[,]" which is in keeping with the constitutional principle that no person shall be deprived of property without due process of law. *Id.* (citing Commissioner of Internal Revenue v. Reyes, G.R. No. 159694, 480 SCRA 382, 393 (2006)).

usage."[75] One specific example of this was noted in *Consolidated Mines, Inc. v. Court of Tax Appeals*,[76] where the Supreme Court provided

> [w]hile taxable income is based on the method of accounting used by the taxpayer, it will almost always differ from accounting income. This is so because of a fundamental difference in the ends the two concepts serve. Accounting attempts to *match cost against revenue*. Tax law is aimed at *collecting revenue*. It is quick to treat an item as income, slow to recognize deductions or losses. Thus, the tax law will not recognize deductions for contingent future losses except in very limited situations. Good accounting, on the other hand, requires their recognition. Once this fundamental difference in approach is accepted, income tax accounting methods can be understood more easily.[77]

It is thus important for a Revenue Officer to be properly trained with the audit procedures and experience to understand the divergence of accounting methods as against tax reporting.[78] All Revenue Officers are required to utilize technical skill, training, and experience, and follow the minimum audit procedures prescribed in the Handbook on Audit Procedures.[79] Quality audit requires the examination of the taxpayer's books and records with sufficient depth for the purpose of ascertaining the correctness and validity of entries and the propriety of the tax laws sought to be applied.[80] Further, regulations provide that a Revenue Officer must familiarize himself with the business activity of the taxpayer assigned for audit.[81] The Revenue Officer is required to evaluate the various methods and procedures the taxpayer applies, be

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75. *Lancaster Philippines, Inc.*, 831 SCRA at 24.

76. Consolidated Mines, Inc. v. Court of Tax Appeals, G.R. Nos. L-18843 & L-18844, 58 SCRA 618 (1974).

77. *Id.* at 623 n. 1 (citing 33 AM. JUR. 2d 688) (emphases supplied and omitted).

78. *See* American Automobile Association v. United States, 367 U.S. 687, 694 (1961). Divergencies have developed between the computation of income for tax purposes and income for business purposes as computed under generally accepted accounting principles, particularly with respect to the types of revenue and expenses that should be taken into account in arriving at net income. *Id.*

79. RAMO No. 01-00, § VII. Also note, "[t]he updated Handbook on Audit Procedures and Techniques has been prepared to equip all Revenue Officers who conduct field examinations with[ ]the necessary knowledge for the *proper examination* of tax returns and provide them with confidence in carrying out the investigation." *Id.* § I (B) (emphasis supplied).

80. *Id.* § I (A).

81. *Id.* § I (B).

observant, and inquisitive in his examination, and above all, observe proper reasonableness.[82]

Revenue Officers are also strictly prohibited from conducting a "table audit."[83] A table audit is said to be only a tool for the planning stage of the audit process.[84] It is useful in determining which areas or issues should be explored and studied further and deeper.[85] It is not the full audit and examination contemplated in the NIRC. Any assessment based merely on a table audit has been held to violate a taxpayer's right to due process.[86]

In *Commissioner of Internal Revenue v. Hantex Trading Co., Inc.*,[87] the Supreme Court remanded the records to the CTA for further proceedings since the CIR failed to adduce certified true copies or duplicate original copies of the documents used as basis of a deficiency assessment.[88] The Supreme Court, in the decision penned by Associate Justice Roman J. Callejo, Sr., held that the CIR had come out with a "'naked assessment,' i.e., without any foundation character [such that] the determination of the tax due is without rational basis."[89] The Supreme Court also held that "considering that it [had] been established that the [CIR's] assessment is barren of factual basis, arbitrary[,] and illegal,"[90] there would be a travesty of justice if such would give rise to a deficiency assessment.[91]

Finally, all Revenue Officers are required to complete their audit. Otherwise, their failure may give rise to an incident of a "jeopardy

82. *Id.*

83. Bureau of Internal Revenue, Submission of Report on Tax Cases Before the Expiration of the Period of Limitation on Assessment, Revenue Memorandum Order No. 16-80 [RMO No. 16-80], § 3 (May 9, 1980). "Table audit" and "table assessment" are used interchangeably by courts.

84. *Id.*

85. Bureau of Internal Revenue, Revenue Audit Memorandum Order [RAMO 2-2000] (Feb. 28, 2000).

86. *Id.*

87. Commissioner of Internal Revenue v. Hantex Trading Co., G.R. No. 136975, 454 SCRA 301 (2005).

88. *Id.* at 335-36.

89. *Id.* at 330 (citing U.S. et al. v. Janis, 428 U.S. 433, 441 (1976)).

90. *Hantex Trading Co.*, 454 SCRA at 335.

91. *Id.*

assessment." Revenue Regulation No. 30-2002[92] defines a jeopardy assessment as

> a tax assessment which was assessed without the benefit of complete or partial audit by an authorized [R]evenue [O]fficer, who has reason to believe that the assessment and collection of a deficiency tax will be jeopardized [or] delay[ed] because of the taxpayer's failure to comply with the audit and investigation requirements to present his books of accounts and/or pertinent records, or to substantiate all or any of the deductions, exemptions, or credits claimed in his return[.][93]

In case of a jeopardy assessment, a taxpayer may negotiate an offer to compromise with the CIR on the ground of the "doubtful validity" of the assessment.[94]

IV. ISSUANCE AND DISCUSSION ON THE NOTICE OF DISCREPANCY

After the audit, the Revenue Officers are required to schedule an informal conference with the taxpayer to discuss their findings.[95] Under RR 12-99, Revenue Officers were required to serve a document called a "Notice of Informal Conference" (NIC).[96] The NIC is not yet an assessment. The NIC merely contains the findings of the Revenue Officers and requires the taxpayer to attend an informal conference with the Revenue Officers within 30 days from receipt of the NIC.[97] Within seven days from the conclusion of the Informal Conference, and if it is found that the taxpayer is still liable for deficiency tax or taxes after presenting his side, and the taxpayer is not

92. Bureau of Internal Revenue, Revenue Regulations Implementing Sections 7 (c), 204 (A) and 290 of the National Internal Revenue Code of 1997 on Compromise Settlement of Internal Revenue Tax Liabilities Superseding Revenue Regulations Nos. 6-2000 and 7-2001, Revenue Regulation No. 30-2002 [RR No. 30-2002] (Dec. 16, 2002).

93. *Id.* § 3 (1) (a).

94. *Id.* § 3 (1).

95. RR No. 12-99, § 3 (3.1.1).

96. *Id.*

97. Bureau of Internal Revenue, Amending Certain Sections of Revenue Regulations No. 12-99, as Amended by Revenue Regulations No. 18-13, Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment, Revenue Regulation No. 07-2018 [RR No. 07-2018], § 2 (Jan. 22, 2018).

amenable, the Revenue Officers may then endorse the matter for the issuance of a PAN.[98]

There has been a modification of this process. In 2020, the DOF issued RR 22-2020 requiring Revenue Officers to now prepare a document called a Notice of Discrepancy (NoD).[99] They are required to state the discrepancies found in the NoD.[100] Based on the template of an NoD, a taxpayer must be able to present and explain the reported discrepancies within five days from receipt of the Notice.[101] Should the taxpayer need more time to present documents, he may submit such documents after the discussion but within 30 days from receipt of the NoD.[102] Similar to the NIC process, a discussion on the discrepancies must not extend beyond 30 days from the taxpayer's receipt of the NoD.[103] A taxpayer is also required to submit all necessary supporting documents explaining the discrepancies within the 30-day period after receipt of the NoD.[104]

However, RR 22-2020 has lengthened the period for the Revenue Officers to forward the matter to the assessment division. Instead of seven days under RR 12-99,[105] Revenue Officers are now afforded 10 days from the conclusion of the discussion to endorse the matter for the issuance of a PAN.[106] RR 22-2020 also emphasized that such discussion must have afforded the taxpayer the opportunity to present evidence and address the discrepancies.[107]

The concept of a "discrepancy" may have been taken from the BIR's reliance on its RELIEF System. While Revenue Officers are allowed to use the computer-generated data through its RELIEF System,[108] under Revenue

98. *Id. See also* RR No. 12-99, § 3 (3.1.2).

99. RR No. 22-2020, § 2.

100. *Id.*

101. *Id.* annex A.

102. *Id.* § 2.

103. *Id.*

104. *Id.*

105. RR No. 12-99, § 3 (3.1.1) (as amended). *See* RR No. 07-2018, § 2.

106. RR No. 22-2020, § 2.

107. *Id.*

108. Bureau of Internal Revenue, Guidelines and Procedures on the Processing of Quarterly Summary Lists of Sales and Purchases and of the Imposition of Penalties Therefor as Provided under Revenue Regulations No. 8-2002, Revenue Memorandum Order No. 04-2003 [RMO No. 04-2003], § I (Feb. 20, 2003).

Memorandum Order No. 04-2003,[109] it is expressed that any computer-generated data alone from the RELIEF's computerized system is *inconclusive*.[110] Revenue Officers must actually match the computer data with "other externally sourced data" —

> The RELIEF System shall cover all [Value Added Tax] taxpayers above threshold limits set by RR 8-2002 to submit Summary Lists of Sales and Purchases in magnetic form based on a prescribed electronic format. *The consolidation and matching of information with other externally sourced data* will detect underdeclaration of revenues/overdeclaration of cost and expenses, thus resulting in greater tax potential.[111]

Thus, in Revenue Memorandum Order No. 46-2004[112] the CIR requires Revenue Officers to "[o]btain Sworn Statements from [third-party information] sources ... attesting to the veracity of the data provided."[113] This is consistent with the ruling of the Supreme Court in *Hantex*, which requires an assessment to be based on facts supported by *credible evidence*.[114]

Thus, given the amendments introduced by the DOF and other existing Revenue Memorandum Orders issued by the CIR, Revenue Officers are required to ensure that: (a) the taxpayer is properly notified of the discrepancies found in the audit; (b) the taxpayer be given a full opportunity to submit evidence to support the explanations of said discrepancies; (c) there be a discussion of the discrepancies; (d) the PAN may only issue after the concerned Revenue Officer considers the supporting documents and evidence presented by the taxpayer; and (e) in case a discrepancy is taken from computer generated

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109. Bureau of Internal Revenue, Guidelines and Procedures on the Processing of Quarterly Summary Lists of Sales and Purchases and of the Imposition of Penalties Therefor as Provided under Revenue Regulations No. 8-2002, Revenue Memorandum Order No. 04-2003 [RMO No. 04-2003] (Feb. 20, 2003).

110. *See id.* § I (emphasis supplied).

111. RMO No. 04-2003, § I (emphasis supplied).

112. Bureau of Internal Revenue, Additional Supplement and Guidelines in Handling Letter Notices with Discrepancies Arising from Data Matching Processes as defined in Revenue Memorandum Order (RMO) Nos. 34-2004 and 30-2003, as amended by RMO Nos. 42-2003 and 24-2004, which remain Unserved, have been Served but are Without Response, or are Under Protest by Taxpayers, Revenue Memorandum Order No. 46-2004, [RMO No. 46-2004] (Sept. 2, 2004).

113. *Id.* § III (3).

114. *Hantex Trading Co.*, 454 SCRA at 330 (emphasis supplied).

data under the BIR's RELIEF System, said data should be verified and supported by sworn statements and credible evidence.

Each Revenue Officer is also required to prepare three (3) copies of the NoD: one to be served to the taxpayer, one to be attached to the docket of the case, and one to be left in the RDO's office.[115] Further, all Revenue Officers must ensure that the taxpayer print their name and affix their signature on the NoD copy to be left in the docket and in the records of the RDO's office.[116]

V. ISSUANCE AND VALID SERVICE OF THE PRELIMINARY ASSESSMENT NOTICE

Upon the conclusion of the NoD stage, and when the Revenue Officers, upon evaluation of the evidence, determine that the taxpayer has failed any or all of the discrepancies which they find, the matter will then be forwarded to the Assessment Division for the issuance of the PAN.[117]

A PAN must contain "in detail, the facts and the law, rules and regulations, or jurisprudence on which the [preliminary] assessment [will be] based."[118] The issuance of a PAN is significant as this is the "pre-assessment notice" required to be issued under Section 228 of the NIRC.[119] A taxpayer is given only 15 days from date of receipt of the PAN to file a Reply.[120] In case of failure to respond, the taxpayer shall be considered in default.[121] The Assessment Division is required to evaluate the Reply.[122]

The issuance and valid service of PAN is a mandatory and substantive requirement.[123] In *Commissioner of Internal Revenue v. Metro Star Superama,*

115. Bureau of Internal Revenue, Prescribing the Manner on How Concerned Taxpayers Shall Be Informed of the Procedures in Responding to the Issuance of Deficiency Tax Assessments, Revenue Memorandum Circular No. 15-2020 [RMC No. 15-2020], para. 2 (Feb. 12, 2020).

116. *Id.* para. 3.

117. RR No. 22-2020, § 2.

118. RR No. 12-99, § 3 (3.1.2).

119. NAT'L INTERNAL REVENUE CODE, § 228.

120. RR No. 12-99, § 3 (3.1.2).

121. *Id.*

122. *Id.*

123. Commissioner of Internal Revenue v. Metro Star Superama, Inc., G.R. No. 185371, 637 SCRA 633, 646 (2010).

Inc.,[124] the Supreme Court, in a decision penned by Associate Justice Jose C. Mendoza, held that the issuance of a FAN without prior valid service of the PAN renders the deficiency assessment void.[125] In the said case, the Revenue Officers failed to discharge the burden of proving that they properly served a PAN on the taxpayer prior to their issuance of the FAN.[126] The Supreme Court found that the Revenue Officers violated the due process rights of the taxpayer.[127] They failed to strictly comply with the notice requirements under Section 228 and the Due Process Requirements in RR 12-99.[128] The Supreme Court held —

> This now leads to the question: Is the failure to strictly comply with notice requirements prescribed under Section 228 of the National Internal Revenue Code of 1997 and Revenue Regulations (R.R.) No. 12-99 tantamount to a denial of due process? Specifically, are the requirements of due process satisfied if only the FAN stating the computation of tax liabilities and a demand to pay within the prescribed period was sent to the taxpayer?
>
> ...
>
> Indeed, Section 228 of the Tax Code clearly requires that *the taxpayer must first be informed that he is liable for deficiency taxes through the sending of a PAN*. He must be informed of the facts and the law upon which the assessment is made. *The law imposes a substantive, not merely a formal, requirement*. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations — that taxpayers should be able to present their case and adduce supporting evidence.[129]

VI. ISSUANCE OF THE FORMAL LETTER OF DEMAND AND ASSESSMENT NOTICE

A formal letter of demand and assessment notice is issued by the Regional Director.[130] The Formal Letter of Demand (FLD) is a "demand calling for

124. Commissioner of Internal Revenue v. Metro Star Superama, Inc., G.R. No. 185371, 637 SCRA 633 (2010).

125. *Id.* at 646.

126. *Id.* at 642.

127. *Id.* at 646 (citing Tupas v. Court of Tax Appeals, G.R. No. 89571, 193 SCRA 597, 600 (1991)).

128. *See id.*

129. *Metro Star Superama, Inc.*, 637 SCRA at 642-44 (citing Ang Tibay v. Court of Industrial Relations, 69 Phil. 635 (1940)) (emphases supplied).

130. RR No. 12-99, § 3 (3.1.4).

payment of the taxpayer's deficiency tax or taxes[.]"[131] Under Section 228, the FLD should state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based; otherwise, the said FLD shall be void.[132] For purposes of this Article, the FLD is the same as the FAN.

It has been held that "[t]he word 'shall' in Section 228 of the National Internal Revenue Code and [RR] 12-99 means the act of informing the taxpayer of both the legal and factual bases of the assessment is *mandatory*."[133] The rationale behind the requirement that a taxpayer should be informed of the facts and the law on which the assessments are based "conforms with the constitutional mandate that no person shall be deprived of his or her property without due process of law."[134]

The purpose of the written notice requirement is to aid the taxpayer in making a reasonable protest, if necessary.[135] Thus, in *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*,[136] the Supreme Court held that a FAN that only contained a tabulation of the deficiency taxes with no other details was insufficient and void —

> In the present case, a mere perusal of the [Final Assessment Notice] for the deficiency EWT for taxable year 1994 *will show that other than a tabulation of the alleged deficiency taxes due, no further detail regarding the assessment was provided by petitioner. Only the resulting interest, surcharge*[,] *and penalty were anchored with legal basis*. Petitioner should have at least attached a detailed notice of discrepancy or stated an explanation why the amount of ₱48,461.76 is collectible against respondent and how the same was arrived at.[137]

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131. *Id.*

132. NAT'L INTERNAL REVENUE CODE, § 228.

133. Commissioner of Internal Revenue v. Fitness by Design, Inc., G.R. No. 215957, 808 SCRA 422, 439 (2016) (citing Commissioner of Internal Revenue v. Liquigaz Philippines Corp., G.R. No. 215534, 790 SCRA 79, 93 (2016); *Enron Subic Power Corp.*, 576 SCRA at 216-17 (2009); & Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc., G.R. No. 197515, 729 SCRA 113, 128 (2014)) (emphasis supplied).

134. *Fitness by Design, Inc.*, 808 SCRA at 439-40 (citing *Liquigaz Philippines Corp.*, 790 SCRA at 97).

135. *See United Salvage and Towage (Phils.), Inc.*, 729 SCRA at 123.

136. Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc., G.R. No. 197515, 729 SCRA 113 (2014).

137. *Id.* at 128 (citing Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc., CTA EB No. 662, at 11-12 (2011)) (emphasis supplied).

In *Commissioner of Internal Revenue v. Reyes*,[138] the Supreme Court, in a decision penned by Chief Justice Artemio V. Panganiban, affirmed the Court of Appeals' finding that the assessment issued against an estate was void for not containing the facts and the law on which the assessment is based.[139] The representative of the estate was merely given notice of the findings by the CIR.[140] As the PAN was issued against the estate on 12 February 1998, the Supreme Court noted that Republic Act No. 8424[141] was already in effect, and mere notice under the old law was thus no longer sufficient under the new law.[142] The Supreme Court held —

> At the time the pre-assessment notice was issued to Reyes, [R.A. No.] 8424 already stated that the taxpayer must be informed of *both the law and facts on which the assessment was based*. Thus, the CIR should have required the assessment officers of the Bureau of Internal Revenue (BIR) to follow the clear mandate of the new law. The old regulation governing the issuance of estate tax assessment notices ran afoul of the rule that tax regulations — old as they were — should be in harmony with, and not supplant or modify, the law.[143]

Thus, under the present provisions of the NIRC and pursuant to elementary due process, taxpayers must be informed in writing of the law and the facts upon which a tax assessment is based.[144] Otherwise, the same is void.[145]

It is also important to note that the FLD must be issued no later than "three years [ ] after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period[.]"[146] "[W]here a return is

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138. Commissioner of Internal Revenue v. Reyes, G.R. No. 159694, 480 SCRA 382 (2006).

139. *Id.* at 392-93.

140. *Id.* at 387.

141. An Act Amending the National Internal Revenue Code, as Amended, and For Other Purposes [NAT'L INTERNAL REVENUE CODE], Republic Act No. 8424 (1997) (as amended).

142. *Reyes*, 480 SCRA at 393-94.

143. *Id.* at 395 (citing Benjamin B. Aban, Law of Basic Taxation in the Philippines 149 (2001)) (emphasis supplied).

144. NAT'L INTERNAL REVENUE CODE, § 228.

145. *Id.*

146. *Id.* § 203.

filed beyond the period prescribed by law, the three-year period shall be counted from the day the return was filed."[147]

VII. CONSIDERATION OF THE ADMINISTRATIVE PROTEST

Under Section 228, a taxpayer has the right to protest the assessment administratively by either filing a written protest within 30 days from receipt of the FAN.[148] The written protest may be in the form of either: (i) a request for reconsideration, or (ii) a request for reinvestigation.[149] If there are several issues involved in the FAN, and the taxpayer only disputes the validity of some of the issues raised, the taxpayer shall be required to pay the deficiency taxes due on the undisputed issues, inclusive of the applicable surcharge and/or interest.[150]

"The taxpayer shall state the facts, the applicable law, rules[,] and regulations, or jurisprudence on which the protest is based[;] otherwise, his protest shall be considered void and without force and effect."[151] In case the taxpayer shall file a protest in the form of a reinvestigation, the taxpayer must within 60 days from filing of the protest, submit all relevant supporting documents.[152] Otherwise, the assessment shall become final.[153] However, it has been clarified by the Supreme Court that the mere failure to submit relevant supporting documents does not necessarily render the assessment final, especially if the taxpayer attached certain documents to its protest with request for reinvestigation.[154]

Also, the regulations require the taxpayer to "submit the [relevant supporting] documents."[155] However, the Supreme Court has clarified that

> the term 'relevant supporting documents' should be understood as those documents necessary to support the legal basis in disputing a tax assessment as determined by the taxpayer. ... The [concerned Revenue Officer] cannot demand what type of supporting documents should be submitted.

147. *Id.*

148. *Id.* § 228, para. 4.

149. *Id.*

150. RR No. 12-99, § 3 (3.1.5), para. 1.

151. *Id.* para. 2 (emphasis omitted).

152. *Id.* para. 3.

153. *Id.*

154. Commissioner of Internal Revenue v. First Express Pawnshop Company, Inc., G.R. Nos. 172045-46, 589 SCRA 253, 275 (2009).

155. RR No. 12-99, § 3 (3.1.5), para. 2.

> Otherwise, a taxpayer will be at the mercy of [such Revenue Officer, who] may require the production of documents that a taxpayer cannot submit.[156]

VIII. ISSUANCE OF THE FINAL DECISION ON DISPUTED ASSESSMENT

A Final Decision on Disputed Assessment (FDDA) is a significant document as its issuance gives the taxpayer a right to appeal the assessment to the CTA within 30 days from the taxpayer's receipt.[157] Under Section 7 (a) of Republic Act No. 1125,[158] as amended, the CTA has the exclusive appellate jurisdiction to review by appeal decisions of the CIR in cases involving disputed assessments.[159]

Under RR 12-99, the decision of CIR or the concerned Regional Director shall "state the facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based[.]"[160] His failure to do so renders the decision void, in which case, the same shall not be considered a decision on a disputed assessment.[161] The decision of the Commissioner or his/her duly authorized representative must also state that the same is his/her final decision.[162]

While ideally, the FDDA must comply with the form required under RR 12-99, it is observed from jurisprudence that there have been instances where the Supreme Court has treated mere demand letters to be a final decision of the CIR.[163] In the 1974 case of *Surigao Electric Co., Inc. v. The Honorable Court of Tax Appeals*,[164] former Chief Justice Fred R. Castro had the occasion to enumerate certain communications sent by the CIR to taxpayers as embodying rulings appealable to the CTA:

> (a) a letter which stated the result of the investigation requested by the taxpayer and the consequent modification of the assessment; (b) letter which

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156. *First Express Pawnshop Company, Inc.*, 589 SCRA at 275.

157. RR No. 18-2013, § 2.

158. An Act Creating the Court of Tax Appeals, Republic Act No. 1125, § 7 (a) (1954) (as amended).

159. *Id.* § 7 (a) (1).

160. RR No. 12-99, § 3 (3.1.6).

161. *Id.*

162. *Id.*

163. *See, e.g.*, Commissioner of Internal Revenue v. Isabela Cultural Corporation, G.R. No. 135210, 361 SCRA 71, 77 (2001).

164. Surigao Electric Co., Inc. v. The Honorable Court of Tax Appeals, G.R. No. L-25289, 57 SCRA 523 (1974).

> denied the request of the taxpayer for the reconsideration, cancellation, or withdrawal of the original assessment; (c) a letter which contained a demand on the taxpayer for the payment of the revised or reduced assessment; and (b) a letter which notified the taxpayer of a revision of previous assessments.[165]

For instance, in *Commissioner of Internal Revenue v. Ayala Securities Corporation*,[166] the Supreme Court held that a letter which reiterated a demand by the CIR for the settlement of an assessment made despite the vehement protest filed by the taxpayer is to be treated as the "clear indication of the firm stand of the [CIR] against the reconsideration of the disputed assessment."[167] The Supreme Court thus held that the CTA had correctly taken jurisdiction over the appeal since the letter was deemed to be the final decision of the CIR.[168] The *Surigao Electric Co., Inc.* decision thus deemed it appropriate to issue the following rule to the CIR —

> Prescinding from all the foregoing, we deem it appropriate to state that the Commissioner of Internal Revenue should always indicate to the taxpayer in clear and unequivocal language whenever his action on an assessment questioned by a taxpayer constitutes his final determination on the disputed assessment, as contemplated by sections 7 and 11 of Republic Act 1125, as amended. On the basis of this *indicium* indubitably showing that the Commissioner's communicated action is his final decision on the contested assessment, the aggrieved taxpayer would then be able to take recourse to the tax court at the opportune time. Without needless difficulty, the taxpayer would be able to determine when his right to appeal to the tax court accrues. This rule of conduct would also obviate all desire and opportunity on the part of the taxpayer to continually delay the finality of the assessment — and, consequently, the collection of the amount demanded as taxes — by repeated requests for recomputation and reconsideration. On the part of the Commissioner, this would encourage his office to conduct a careful and

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165. *Id.* at 526-27 (citing Pangasinan Transportation Co., v. Blaquera, 107 Phil. 975 (1960); Villamin v. Court of Tax Appeals and Collector of Internal Revenue, 109 Phil. 896 (1960); Filipinas Investment and Finance Corporation v. Commissioner of Internal Revenue, G.R. No. L-23501, 20 SCRA 50 (1967); Collector of Internal Revenue v. Court of Tax Appeals and Thomson Shirts Factory (Aaron Go & Co.), 109 Phil. 1027 (1960); Tuason & Legarda, Ltd. v. Commissioner of Internal Revenue and Court of Tax Appeals, G.R. No. L-18552, 15 SCRA 99 (1965); & Ker & Company, Ltd. v. Court of Tax Appeals and Collector of Internal Revenue, G.R. No. L-12396, 4 SCRA 160 (1962)).

166. Commissioner of Internal Revenue v. Ayala Securities Corporation, G.R. No. L-29485, 70 SCRA 204 (1976).

167. *Id.* at 209 (emphasis omitted).

168. *Id.*

> thorough study of every questioned assessment and render a correct and definite decision thereon in the first instance. This would also deter the Commissioner from unfairly making the taxpayer grope in the dark and speculate as to which action constitutes the decision appealable to the tax court. Of greater import, this rule of conduct would meet a pressing need for fair play, regularity, and orderliness in administrative action.[169]

In the 2005 case of *Oceanic Wireless Network Inc. v. Commissioner of Internal Revenue*,[170] the Supreme Court held that "[a] demand letter for payment of delinquent taxes may be considered a decision on a disputed or protested assessment."[171] The Supreme Court held that the letter of demand "unquestionably constitute[d] the final action taken by the [CIR] when [he] reiterated the tax deficiency assessments due from petitioner, [ ] requested its payment[,]" and indicated that the failure to pay would result in the "issuance of a warrant of distraint and levy to enforce its collection without further notice. In addition, the letter contained a notation indicating that petitioner's request for reconsideration had been denied for lack of supporting documents."[172] The Supreme Court thus explained that the "determination on whether or not a demand letter is final is conditioned upon the language used or the tenor of the letter being sent to the taxpayer."[173] In said case, the taxpayer was found to have failed to timely appeal the demand letter to the CTA within the 30-day period.[174] Thus, the Supreme Court affirmed the dismissal of the petition.[175]

IX. CONCLUSION

Today, between the power of the State to tax and an individual's right to due process, it is clear that the scale must be tilted in favor of the right of the taxpayer to due process.[176] The Supreme Court has recognized the reciprocal relationship between the taxpayer and the State, and thus adopts the policy emphasized in the U.S. case of *Harbin v. Commissioner of Internal Revenue*.[177]

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169. *Surigao Electric Co.*, 57 SCRA at 528-29.

170. Oceanic Wireless Network Inc. v. Commissioner of Internal Revenue, G.R. No. 148380, 477 SCRA 205 (2005).

171. *Id.* at 211.

172. *Id.* at 212.

173. *Id.* at 211.

174. *Id.* at 215-16.

175. *Id.* at 216.

176. *Metro Star Superama, Inc.*, 637 SCRA at 647.

177. Harbin v. Commissioner, 137 T.C. 93 (2011) (U.S.).

"[T]axation is not only practical; it is vital. The obligation of good faith and fair dealing in carrying out its provision is reciprocal and, as the government should never be over-reaching or tyrannical, neither should a taxpayer be permitted to escape payment by the concealment of material facts."[178]

More importantly, tax investigations fall under the coverage of administrative procedure.[179] This calls into mind the 1940 landmark ruling in *Ang Tibay v. Court of Industrial Relations*,[180] where the Supreme Court held *en banc* that in all administrative proceedings, the following primary rights must be respected:

(1) "[T]he right to a hearing, which includes the right of the party interested or affected to present his own case and submit evidence in support thereof."[181]

(2) The right "to adduce evidence tending to establish the rights which he asserts but the tribunal must consider the evidence presented."[182]

(3) "While the duty to deliberate does not impose the obligation to decide right, it does imply a necessity which cannot be disregarded, namely, that of having something to support it is a nullity, a place when directly attached."[183]

(4) "Not only must there be some evidence to support a finding or conclusion, but the evidence must be 'substantial.'"[184]

(5) "The decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected."[185]

(6) The tribunal tasked to decide "must act on its ... own independent consideration of the law and facts of the controversy, and not

178. *Hantex Trading Co.*, 454 SCRA at 336.

179. *See* Diaz v. Secretary of Finance, G.R. No. 193007, 654 SCRA 96, 120 (2011).

180. Ang Tibay v. Court of Industrial Relations, 69 Phil. 635 (1940).

181. *Id.* at 642.

182. *Id.* (citing Morgan v. U.S., 298 U.S. 468, 481-82 (1936)).

183. *Ang Tibay*, 69 Phil. at 642 (citing Edwards v. McCoy, 22 Phil. 598, 601 (1912)).

184. *Ang Tibay*, 69 Phil. at 642 (citing Washington, Virginia and Maryland Coach Co. v. National Labor Relations Board, 301 U.S. 142, 147 (1937)).

185. *Ang Tibay*, 69 Phil. at 643 (citing Interstate Commerce Commission vs. Louisville & N. R. Co., 227 U.S. 88, 93 (1913)).

simply accept the views of a subordinate in arriving at a decision[;]"[186] and

(7) "[I]n all controversial questions, a tribunal must render its decision in such a manner that the parties to the proceeding can know the various issues involved, and the reasons for the decision rendered."[187]

It is well to observe that the *Ang Tibay* doctrine was cited in the 2018 case of *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*[188] In this case, the Supreme Court ordered the cancellation of assessments and found that there was "feigned compliance by the [BIR] officials and agents of their duties under the law and revenue regulation."[189] This conclusion was based on the finding that the Details of Discrepancy, the PAN, as well as the FLD, did not contain any discussion or address the defenses and documents submitted by Avon.[190] Consequently, Avon "was left unaware on how the [CIR] appreciated the explanations or defenses raised in connection with the assessments."[191] The Supreme Court thus ruled that "[t]here was clear inaction" and violation of Avon's due process rights at every stage of the administrative proceedings.[192] This amounted to an "idle ritual" tantamount to a denial of Avon's right to be heard.[193]

The decision in *Avon* thus reinforces the requirement for all Revenue Officers to truly afford each taxpayer the right to due process. This is an acknowledgment that there must be reciprocal participation in the administrative proceedings and efficient discussion on the deficiency findings of the CIR. He cannot simply raise findings of discrepancies and dismiss the taxpayer's explanation, without providing a discussion as to how he appreciated or considered the evidence of the taxpayer.

This also highlights the importance of having effective, reasonable, and properly trained Revenue Officers knowledgeable in determining the nature and taxability of the transactions. Given that Revenue Officers themselves

186. *Ang Tibay*, 69 Phil. at 644.

187. *Id.*

188. Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc., G.R. Nos. 201398-99, 881 SCRA 451 (2018).

189. *Id.* at 484.

190. *Id.* at 488-89.

191. *Id.* at 488.

192. *Id.*

193. *Id.* at 484.

conduct the audit on the taxpayer's books and records,[194] in this light of day, it is clear that their purpose is not merely to ascertain the accuracy of the computed amounts, but also to be immersed and confident in the propriety of the tax laws they seek to impose.

Certainly, taxes are without a doubt the lifeblood of the government.[195] However, the strong arm of collection should be conducted in accordance with the law, as any form of arbitrariness may result in the destruction of its very own life source.[196] This holds most relevant today, as it is expected that many businesses have been affected by the economic slow-down caused by the COVID-19 pandemic.

194. *See* NAT'L INTERNAL REVENUE CODE, § 13.

195. *Avon Products Manufacturing, Inc.*, 881 SCRA at 495 (citing Commissioner of Internal Revenue v. Algue, Inc., G.R. No. L-28896, 158 SCRA 9, 11 (1988)).

196. *Id.*