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Ayala Land profit rises 18%

Petron nets record P5.6 B in Q1

ICTSI upbeat on drawing more customers to Subic port

Mia Water posts lower earnings

EDC allots P7 B to rehab old plants

# Waiver danger: A refresher on RMO No. 14-2016

Growing up, some of us may have been warned of "stranger danger." Such words of caution were usually told to children to keep them away from the dangers of interacting with unfamiliar people whom they do not know. As with many things that we encounter in this world, we have learned along the way that there will always be danger in not being familiar with the unfamiliar.

Taking cue from the "stranger danger" warning from our childhood, practitioners and taxpayers alike must constantly educate themselves with the ever evolving laws and regulations of taxation. Otherwise, they may be in danger and risk of encountering problems when dealing with the Bureau of Internal Revenue (BIR).

TOP OF MIND

ARIK AARON C. ABU

Section 222 (b) of the National Internal Revenue Code of 1997, as amended, states that the Commissioner of Internal Revenue or his duly authorized representative and the taxpayer or its authorized representative may agree in writing as to a specific date within which to assess and collect internal revenue taxes. Revenue Memorandum Order (RMO) No. 20-90 previously detailed the guidelines for the proper execution of the waiver of the statute of limitations.

In a 2004 decision of the Supreme Court, it was likewise ruled that a waiver of the statute of limitations, being a derogation of the taxpayers' right to security against prolonged and unscrupulous investigations, must be carefully and strictly construed. Hence, both the tax authority and the taxpayer must faithfully comply with the requisites for validity specified under RMO No. 20-90; otherwise, the waiver will be considered invalid. This rule, however, now admits of exceptions.

Early last year, the Court of Tax Appeals echoed the elaborations of such exceptions as pronounced by the Supreme Court. First, when parties are in pari delicto or in equal fault, the court may grant relief to one of them, when public policy requires intervention, even though the result may benefit one who is in equal guilt with the other. Second, the parties must come to court with clean hands, otherwise they cannot be allowed to benefit from their own wrongdoing. Third, the taxpayer

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is estopped from questioning the validity of a waiver, in instances when it allowed the BIR to rely on such waiver without any objection until taxes and penalties were assessed against it. Finally, the court cannot tolerate the highly suspicious situation where the taxpayer, after voluntarily executing waivers, insisted on their invalidity by raising the very same defects it caused.

It has been a year since the BIR issued RMO No. 14-2016, which effectively revised the policies for the proper execution of waiver of the defense of prescription. The RMO is said to have been issued due to the rampant practice of taxpayers to question the validity of their own waivers of the statute of limitations after having availed the benefits thereof.

Under the new RMO, the failure to follow the form prescribed in RMO No. 20-90 will not invalidate the waiver so long as the following conditions are met: a) the waiver is executed before the expiration of the period to assess or to collect taxes, with the date of execution being specifically indicated in the waiver; b) the waiver is signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials; and c) the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription should be indicated.

Moreover, a waiver of the defense of prescription is no longer required to specify the particular taxes to be assessed nor its amount. RMO No. 14-2016 has also shifted the burden to the taxpayers in ensuring that the waivers are validly executed by its authorized representative. Although a waiver may be notarized, it is already sufficient that it is in writing and shall be effective and binding on the taxpayer upon execution. Lastly, there are only two material dates that must be present in the waiver: the date of execution of the waiver by the taxpayer or its authorized representative, and the expiry date of the period the taxpayer waives the statute of limitations.

Therefore, in case of a deficiency tax assessment, execution of a waiver of the statute of limitations will require careful consideration of the taxpayer now more than ever. Reliance on a technical defense, such as questioning the validity of a waiver, has become more dangerous. It would be more prudent for the taxpayer to concentrate on the substantive, factual and legal merits against the assessment of the BIR.

In view of the possible detrimental effects of the RMO, a taxpayer should never be a stranger to the revised rules on waiver of the defense of prescription.

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