

# BIR AUDIT PROCESS AND TAXPAYER'S OBLIGATIONS AND REMEDIES

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## Seminar Objectives

- To provide participants with a comprehensive understanding of the underlying laws, regulations and principles of the audit process of the BIR
- To provide participants with relevant tax developments and updates relating to taxpayers remedies in handling the audit
- To provide participants with practical tips on how to prepare and effectively handle the audit investigation of the BIR

## Discussion Outline

- Organization and Duties of the BIR and CIR
- Audit Process of the BIR
  - Types of Audit
  - Audit Program
  - Letter of Authority
  - Assessment Stage
  - Collection Stage
  - Penalties
  - Compromise Settlement and Abatement
- BIR Obligations and Remedies
- Taxpayers Obligation and Remedies
- Court Decisions Related to Assessment

## Administrative Agencies In Charge Of The Functions – Collection Of Taxes

1. The Bureau of Internal Revenue
2. The Bureau of Customs
3. Duly and lawfully authorized collectors or collecting agencies
4. Provincial Treasurers
5. City Treasurers
6. Municipal Treasurers
7. The Department of Finance

## Powers and Duties of the Bureau of Internal Revenue

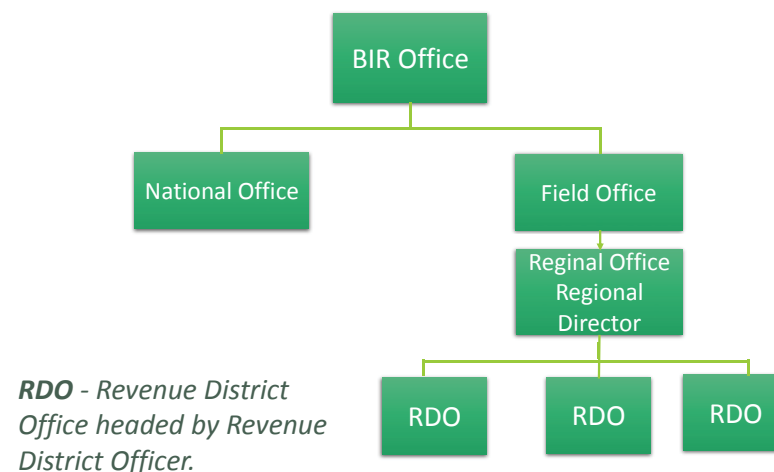
1. To assess and collect all national internal revenue, taxes, fees and charges;
2. To enforce all forfeitures, penalties and fines connected therewith;
3. To execute judgements in all cases decided in its favor by the Court of Tax Appeals and the ordinary courts;
4. To give effect to and administer the supervisory and police power conferred to it by the Tax Code or other laws (Sec. 2.); and
5. To recommend to the Secretary of Finance all needful rules and regulations for the effective enforcement of the provisions of the Tax Code. (Sec. 244.)

## Power of the Commissioner of Internal Revenue

1. The power to interpret the provisions of the Tax Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.
2. The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the Tax Code or other tax laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Appeals. (Sec. 4.)

## Organization of the Bureau of Internal Revenue

1. **Chief officials and basic structure** – The Bureau of Internal Revenue is under one (1) chief and four (4) assistant chiefs known respectively as the Commissioner of Internal Revenue and Deputy Commissioners of Internal Revenue. (see Sec. 3.)
  - a. Office of the Commissioner
  - b. Legal and Inspection Group
  - c. Information Systems
  - d. Resource Management Group
  - e. Operations Group
2. **National Office**
3. **Field Offices**
  - a. Regional Offices – Each office is headed by a Regional Director.
  - b. Revenue District Offices



## Assessment

**Assessment** is the act or process of determining the tax liability of a taxpayer in accordance with the tax laws. Assessment also pertains to the notice sent by the government to the taxpayer informing them of their unpaid or still unpaid tax obligations coupled with a demand to pay the same.

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 (Sec 6A of NIRC)

## Powers of the CIR Relative to the Determination of Correct Tax

The Commissioner of Internal Revenue is empowered to:

- a. Obtain data and information from third parties
- b. Conduct inventory surveillance
- c. Examine and inspect the books of accounts of a taxpayer
- d. Prescribe presumptive gross sales and receipts

## Prescriptive Period Of Assessment

The law requires that assessment must be made **within 3 years** from the date of the actual filing of the return or the deadline required by law, whichever is later.

### Illustration 1: Early filing or filing on the deadline

Taxpayer A filed his 2014 annual income tax return which was due on April 15, 2015 on March 1, 2015.

*A return filed before the last day prescribed by the law for filing thereof shall be considered filed on such last day (Sec. 203, NIRC). The counting of the prescriptive period shall be reckoned from April 15, 2015. The government must serve the assessment to the taxpayer on or before April 15, 2018.*

## Prescriptive Period Of Assessment

### Illustration 2: Late filing

Assume instead that Horacio filed his 2014 annual income tax return on July 1, 2015.

*Where the return is filed beyond the period prescribed by the law, the 3-year period shall be counted from the day the return is filed (Sec. 203, NIRC). Hence the counting of the prescriptive period shall be reckoned from July 1, 2015. The assessment must be served on or before July 1, 2018.*

### Exception to the 3-year rule:

1. Fraudulent or false returns
2. No return was filed by the taxpayer
3. Waiver of statutes of limitation

In cases of fraudulent returns or non-filing of returns, the BIR has up to 10 years from the **discovery** of the fraud or non-filing of returns to make assessments.

## Summary of Prescription Rules: *Deadline of assessment*

	Deadline of Assessment
With a tax return filed	
- Return is non- fraudulent	3 years from the date of filing or deadline whichever is late
- Return is fraudulent or false	10 years from discovery of fraud
Non- filing of tax return	10 years from the discovery of non-filing

## List of Deadline of Various Tax Returns

### A. Income Tax Returns

#### 1. Annual income tax

- Individual – April 15 of the following year
- Corporations – April 15 of the following year or 15<sup>th</sup> day of the fourth month following the end of the fiscal year

#### 2. Capital gains tax return

##### 2.1 Capital gains return on sale of domestic stocks

- Transactional return – 30 days from the date of sale.
- Annual return – 15<sup>th</sup> day of the fourth month following the end of the taxpayer's year-end

## List of Deadline of Various Tax Returns

2.2 Capital gains tax return on sale of real properties – 30 days from the date of sale.

### 3. Withholding tax returns

1. Withholding of final tax and fringe benefits tax – 10 days following the month of the withholding ( manual filing)
2. Withholding tax on compensation income and expanded withholding tax – 10 days from the end of each calendar month; for December, January 15 of the succeeding year

## List of Deadline of Various Tax Returns

### B. Transfer Tax Returns

1. Donor's tax – within 30 days from the date of the donation
2. Estate tax – within 1 year from the date of the decedent's death

### C. Business Tax Returns

#### 1. Non- VAT Taxpayers

- 1.1. Quarterly Percentage tax (BIR Form 2551Q) – within 20 days of the following month.

#### 2. VAT Taxpayers

- 2.1. Quarterly Value Added Tax ( BIR Form 2550Q) – within 25 days of the following month.

## Assessment Based on Deadline of Tax Returns

Except when late, the prescriptive period for assessment shall be counted from the aforementioned deadline of filing of the tax type being assessed.

### Example 1:

Any unpaid tax for a donation made on July 1, 2014 must be assessed on or before July 31, 2017.

### Example 2:

Any unpaid VAT for the quarter ending September 30, 2015 must be assessed on or before October 25, 2018.

## Taxpayer's Right To Modify, Change Or Amend Return

Any return, statement of declaration filed within any office authorized to receive the same shall not be withdrawn. Provided, that ***within 3 years from the date of such filing***, the same may be modified, changed, or amended.

Provided, further, that no notice for audit or investigation of such return, statement or declaration has in the meantime been actually served upon the taxpayer (*Sec. 6 (A), NIRC*).

## Selection Of Taxpayers To Be Audited

The BIR selects taxpayers to be audited based on the selection criteria established in the BIR's Annual Audit Program. The BIR Annual Audit Program identifies high risk taxpayers and medium risk taxpayers to be the audit priority for each year.

The BIR may also identify taxpayers to be subjected to regular audit from the following:

- a. Tax compliance verification drive
- b. Information furnished by tax informers
- c. Pre-audit of tax returns
- d. Direct field observation by revenue officers

## Tax Compliance Verification Drive (TCVD)

- The **Bureau of Internal Revenue** has been regularly conducting inspections on business establishments all over the Philippines, to verify compliance with registration, invoicing and bookkeeping requirements provided for under the existing internal revenue laws, rules and regulations.
- This activity is also known as **"Tax Mapping"**.
- To enforce taxpayer compliance, the BIR instituted a program called **"Oplan Kandado"** (OK). Taxpayers' business will be suspended or temporarily closed for failure to comply with tax regulations.

## Compliance Checklist for TCVD

### ☐ Registration Requirements

- Has taxpayer paid and displayed its Registration fee for the current year?

### ☐ Display of 'Notice to the Public' ('Ask for Receipt') and Certificate of Registration

- Is the Certificate of Registration (Original) displayed?
- Is the "Notice to Public"/" Ask for Receipt" (Original) displayed?

## Compliance Checklist for TCVD

### ☐ Invoicing Requirements and Use of Cash Register Machines

- Is taxpayer duly provided with registered Invoices/or Receipt
- Types of Receipts/Invoices used by taxpayer and last invoice issued

## Compliance Checklist for TCVD

### ☐ Types of Receipts/Invoices used by taxpayer and last invoice issued

- |  |   |   |
|--|---|---|
| <ul style="list-style-type: none"> <li>▫ Charge Invoice</li> <li>▫ Delivery Receipt</li> <li>▫ Cash Invoice</li> <li>▫ Official Receipt</li> </ul> | } | <p>Indicate Serial Number, Date of last invoice issued and Official Control No. (OCN)</p> |
|--|---|---|

## Compliance Checklist for TCVD

### ☐ Is Taxpayer using Cash Register Machine?

### ☐ Are all Cash Register Machines with permits?

- If yes, Number of Units - Serial Number / Is the Record Updated
- If no, Number of Unregistered Units - Serial Number

## Compliance Checklist for TCVD

### ☐ Bookkeeping Regulations

- Are Books of Accounts registered?
- Is recording updated?
- Is taxpayer using computerized book of accounts?

## Mission Order For TCVD

- A Mission Order is issued by the Regional Director stating the authorized Revenue Officers composing the Tax Mapping team, the area covered and the date/time of operation.
- All surveillance activities shall be covered by Mission Orders (MOs)

## RMO 7-2015: Schedule of Compromise Penalty (For TCVD)

VIOLATIONS CHECKLIST		
		Revised Amount of Compromise Penalty (RMO 7-2015)
<b>A.</b>	<b>REGISTRATION REQUIREMENTS</b>	
A1.	Failure to Register	If the subject establishment is located in the following: a. Cities - 20,000* b. 1st class municipalities - 10,000* c. 2nd class municipalities 5,000* d. 3rd class municipalities 2,000* <b>* Penalties provided are inclusive of all other violations</b>
A2.	Failure to Pay Annual Registration Fee	P 1,000
A3.	No Certificate of Registration displayed	P 1,000
A4.	Failure to display the poster 'Notice to the Public' ('Ask for Receipt')	P 1,000

## RMO 7-2015: Schedule of Compromise Penalty (For TCVD)

<b>B.</b>	<b>INVOICING REQUIREMENTS</b>	<b>1<sup>st</sup> Offense</b>	<b>2<sup>nd</sup> Offense</b>
B1.	Failure to issue receipts/invoices	P 10,000 <i>Subsequent violations shall not be subject to compromise.</i>	P 20,000
B2.	Refusal to issue receipts/invoices	P 25,000 <i>Subsequent violations shall not be subject to compromise.</i>	P 50,000
B3.	Duplicate Copy of the receipts/invoices is blank but the accomplished original is detached	P 20,000 <i>Subsequent violations shall not be subject to compromise.</i>	P 50,000

## RMO 7-2015: Schedule of Compromise Penalty (For TCVD)

B.	INVOICING REQUIREMENTS	1 <sup>st</sup> Offense	2 <sup>nd</sup> Offense
B4.	Use of unregistered receipts/invoices	P 20,000	P 50,000 <i>Subsequent violations shall not be subject to compromise.</i>
B5.	For issuance of receipts that do not truly reflect and/or incomplete information is shown in the receipts/invoices	<i>Subsequent violations shall not be subject to compromise.</i>	
B6.	Use of unregistered Cash Register Machine (CRM) and/or Point of Sales Machine (POS) or similar devices lieu of invoices or receipts	P 25,000/unit	P50,000/unit <i>Subsequent violations shall not be subject to compromise.</i>
B7.	Failure to attach or paste original sticker in the machine authorizing the use of the CRM/POS or similar device	P 1,000	

## RMO 7-2015: Schedule of Compromise Penalty

C.	BOOKKEEPING REQUIREMENTS		
C1.	Failure to register Books of Accounts /Cash Register Machine's sales books		P 1,000
C2.	Failure to keep Books of Accounts at the place of business		
	If gross annual sales, earnings or receipts		
	Exceeds	But Does Not Exceed	Compromise is
	P xxx	P 50,000	P 1,000
	50,000	100,000	3,000
	100,000	500,000	5,000
	500,000	5,000,000	10,000
	5,000,000	10,000,000	15,000
	10,000,000	20,000,000	20,000
	20,000,000	50,000,000	30,000
	50,000,000	xxx	50,000

## RMO 7-2015: Schedule of Compromise Penalty

C.	BOOKKEEPING REQUIREMENTS	
C3.	Failure to make entries in the registered Books of Accounts; In any way commits an act or omission in violation of the provisions of Sec. 257, NIRC.	P1,000 or the compromise penalty set forth in this Schedule for the particular act or omission, whichever is higher, or cannot be compromised if it involves fraud.
D.	OTHER VIOLATIONS (refer to RMO 7-2015, Annex A)	Subject to graduated rates based on the nature of violation/s committed that is mentioned under the NIRC

## Tax Information

Taxpayers which could be subjected to regular detailed audit may be identified based on information furnished by tax informants. Tax informants are given reward based on the taxes collected from such information.



## Pre- audit Of Annual Income Tax Return

A pre-audit is conducted to verify the following:

1. Mathematical computations of income tax due and payment.
2. Correctness and applicability of exemptions claimed by individuals against the registration records.
3. Correctness and validity of deductions and expenses subject to ceiling limitations
4. Validity of claims for income tax holiday, tax exemption and other claimed tax incentives
5. Correctness of the application of the minimum corporate income tax

## Pre- audit Of Annual Income Tax Return

A pre-audit is conducted to verify the following:

6. Claimed creditable withholding taxes against tax due and substantiation of claims through certificates of withholding tax.
7. Correct utilization of tax credit certificates which should be duly supported by an approved Tax Debit Memo issued by the authorized RDO.
8. Correctness of deductions claimed by taxpayers who opted OSD
9. Accuracy and applicability of the computation of the NOLCO
10. Completeness of the required attachment to annual ITR's

## RMO 54-2000 - Surveillance

Surveillance covers the following taxpayers:

- Persons perceived to be not declaring their correct income, sales or receipts;
- Persons found to have failed to issue official receipts and invoices or have issued unregistered official receipts/invoices or found to be in possession of unregistered invoices/official receipts including unregistered cash register machines and point of sale machines in violation of the requirements under Sec. 113 and 237 of the NIRC of 1997;

## RMO 54-2000 - Surveillance

- Persons who failed to file required returns/forms/statements at the time prescribed by law or who willfully or otherwise file false or fraudulent returns/forms/statements; and
- Persons who failed to register with the BIR as required under Sec. 236 of the NIRC of 1997.

## Classification of Surveillance

- **Covert Surveillance** — the surreptitious and undercover watch on the business operations of a person for a certain period before the conduct of the inventory of business documents evidencing receipt of income as well as movement of goods or rendition of services, or apprehension/seizure of the aforementioned business documents and properties found to be the subject of violations of the provision of the NIRC of 1997 and its implementing regulations. (*See Section 6(c), Tax Code of 1997*)

## Classification of Surveillance

- **Overt Surveillance** — the type of surveillance which commences with the inventory taking of the business documents of the person under surveillance followed by the actual observation and close monitoring of the business activities of such person.
- **Short Duration Surveillance (Tax Compliance Check)** — the type of surveillance wherein the business operations of the target taxpayer is observed for purposes of detecting non-compliance with the Bureau's primary and secondary registration requirements. It is an on-and-off activity which does not involve prolonged on-premises observation.

## RMO 19-2015: BIR Audit Program

### ❖ Mandatory Cases For Audit

1. Claims for income tax refund or issuance of tax credit certificate
2. Claims for Value-Added Tax (VAT) refund/credit
3. Claims for tax refund/credit of excise tax, regardless of amount
4. Claims for tax refund/credit on erroneous/double payment of taxes, regardless of amount
5. Request for tax clearance of taxpayers due to retirement/cessation of business with gross sales/receipts exceeding P1,000,000.00 or gross assets exceeding P3,000,000.00

## RMO 19-2015: BIR Audit Program Mandatory Cases For Audit

6. Request for tax clearance of taxpayers undergoing merger/consolidation/split-up/spin-off and other types of corporate reorganizations
7. Cases with unresolved Letter Notices
8. Estate tax returns with other tax liabilities
9. Policy cases covered by written directive of the Commissioner

## **RMO 19-2015: BIR Audit Program**

### **❖ Priority Taxpayers/Industries for Audit**

1. Taxpayers mandatorily covered to file their returns using eFPS or eBIR Forms under existing revenue issuances but failed to use the same.
2. Taxpayers maintaining an ending inventory of 100% or more of their gross sales
3. Issue-oriented audits (e.g., transfer pricing, Base Erosion Profit Shifting (BEPS), industry issues, etc.)
4. Taxpayers whose compliance is below the established benchmark rate
5. Taxpayers who have failed to comply with the submission of information returns required under existing revenue issuances (e.g., Alphalist, Inventory List, List of Tenants, SLS/P, eSales)
6. Taxpayers enjoying tax exemptions/incentives

## **RMO 19-2015: BIR Audit Program**

### **Priority Taxpayers/Industries**

7. Taxpayers which were placed under surveillance, *Oplan Kandado* and other enforcement programs of the Bureau
8. Taxpayers reporting gross/net loss or no taxable income or no tax due for two (2) consecutive years
9. Government agencies with validated "due to BIR" per COA report
10. LGUs engaged in proprietary activities or LGUs who fail to remit taxes withheld regularly
11. Taxpayers with income tax due of less than 2% of gross sales/revenues
12. Taxpayers with increase in assets of more than fifty percent (50%) from the previous year but with reported net loss

## **RMO 19-2015: BIR Audit Program**

### **Priority Taxpayers/Industries**

13. Taxpayers with claims for losses/damages due to natural calamities or those claiming inventory obsolescence
14. Taxpayer deriving its revenue/income exclusively or substantially from its parent company/subsidiaries/affiliates
15. Taxpayers claiming write-off of input tax as allowable deduction in its annual income tax returns
16. Taxpayers with shared expenses and other interrelated charges being imputed by a parent company to its affiliates and likewise an affiliate to other affiliate in a conglomerate
17. Professionals (e.g., lawyers, doctors, engineers, architects, CPAs, actors/actresses, media personalities, professional athletes, insurance agents, real estate service practitioners, event planners, etc.) with low income and/or business tax compliance
18. Real estate industry

## **RMO 19-2015: BIR Audit Program**

### **Priority Taxpayers/Industries**

19. Telecommunications industry (TELCOS)
20. Contractors of National Government Agencies (NGAs), Local Government Units (LGUs) and Government Controlled Corporations
21. Sellers of goods and services via e-commerce
22. Hospitals, Clinics, Medical/Dental Laboratories
23. Amusement/Entertainment/Event Centers
24. Advertising Agencies

## RMO 19-2015: BIR Audit Program Priority Taxpayers/Industries

25. Business Processing Outsourcing Companies
26. Insurance Companies
27. Restaurants/Fast Food Chains/Catering Services/Bars/Coffee Shops
28. Taxpayers with zero-rated sales ZRS
29. Taxpayers with intelligence information such as specific TPI business knowledge, third party data and publicly available information (e.g., from media press releases vs. actual revenue/tax declaration per return, etc.)

## RMO 19-2015: BIR Audit Program

General Rule – No audit on the 3rd consecutive year

If the taxpayer has been audited for the last two (2) years and has been again selected for audit on the current or 3rd year, the RDO/LTD/LTAD shall submit a written explanation to the Commissioner as to why such taxpayer shall be subjected to audit for three (3) succeeding years

The written explanation is not needed if taxpayer has under declaration of sales/income or overstatement of expenses/deductions by at least 30% (prima facie evidence of fraud).

## SUBMISSION OF AUDIT REPORT

Case Classification	No. of Days to Submit Report of Investigation/ Verification
Cases covered by eLAs other than claims for VAT refund/credit	180 days for Regional cases and 240 days for LT cases, from the date of the Ela
Claims for VAT refund/credit cases	60 days for Regional cases, and 80 days for VCAD and LT cases, from the date of filing of the application
TVN on Estates tax cases	60 days from submission of complete documents
MOA on ONETT cases	5 days from submission of complete documents
MOA on protested cases/ reinvestigation	60 days from the submission of complete documents in case of request for reinvestigation; 60 days from the date of MOA in case of request for reconsideration

*Note : Failure on the part of RO to render a report within the time frame shall not nullify the eLA.*

## Frequency Of Taxpayer Examination

The taxpayer shall be subject to examination only **once** in every taxable year, except when:

- a. The CIR determined that fraud, irregularities, or mistakes were committed by the taxpayer.
- b. The taxpayer requested for re-investigation or re-examination.
- c. There is a need to verify taxpayer's compliance with withholding tax and other internal revenue taxes.
- d. The taxpayer's capital gains tax liabilities must be verified.
- e. The CIR exercises his power to obtain information relative to the examination of other taxpayers.

## Rules on Waiver

	Previous rules/requisites on validity of waivers	Rules under RMO No. 14-2016 dated April 4, 2016
<b>Form</b>	In the form prescribed under RDAO No. 05-01	May or may not be in the form prescribed under RMO No. 20-90 or RDAO No. 05-01.
<b>Person authorized to sign for the TP</b>	Signed by TP or his duly-authorized representative. For corporations, must be signed by any of its responsible officials	No change
<b>BIR officers authorized to accept</b>	BIR officers authorized to accept	CIR or officials previously designated in existing issuances, or concerned RDO or group of supervisors designated in the LOA/Memorandum of Assignment shall indicate the acceptance by signing (date of acceptance is not specifically required to be indicated)

## Rules on Waiver

	Previous rules/requisites on validity of waivers	Rules under RMO No. 14-2016 dated April 4, 2016
<b>Time of execution by the TP and acceptance by the BIR</b>	Date of execution and acceptance must be before expiration of the prescriptive period or lapse of the period previously agreed upon.	No change
<b>Material Dates</b>	The material dates are: <b>a)</b> execution by the TP, <b>b)</b> notarization, <b>c)</b> acceptance by the BIR and <b>d)</b> expiry date of the period the taxpayer waives the statute of limitations.	The only material dates are: <b>a)</b> execution and <b>b)</b> expiry date of the period the TP waives the statute of limitations
<b>Number of copies for execution</b>	Executed in 3 copies (original attached to case docket, 2nd copy for TP, and 3rd copy for BIR office accepting the waiver)	Not specifically required

## Rules on Waiver

	Previous rules/requisites on validity of waivers	Rules under RMO No. 14-2016 dated April 4, 2016
<b>Requirement for TP to receive a copy of the duly accepted Waiver</b>	TP received a copy of the waiver accepted by the BIR	Not specifically required
<b>Other considerations/ Contesting the validity of Waivers</b>	Exception to the above rules: Under the Next Mobile CTA case, the TP should not be allowed to benefit from the flaws in its own Waivers and successfully insist on their invalidity in order to evade its responsibility to pay taxes.	TP has the burden of ensuring the validity of Waivers executed by its authorized representatives and such authority shall not thereafter be contested

## Revenue Memorandum Order No. 32-2018

- ❖ This issuance aims to improve the voluntary compliance of individual and non-individual taxpayers belonging to the **small category** and to generate additional revenues from these taxpayers through audits in the Regional Offices.

## Revenue Memorandum Order No. 32-2018

- ❖ **Electronic Letters of Authority (eLAs)** - shall be issued to cover the audit/ investigation of taxpayers for tax returns for taxable year 2017 under the jurisdiction of the Regional Office with gross sales/ receipts as follows:

Regions Nos.	Gross Sales/ Receipts
5,6,7 and 8	P 10,000,000.00 and below
1,4,9A,9B,11,12,13,16 and 19	P 5,000,000.00 and below`
2,3,10,14,15,17 and 18	P 2,000,000.00 and below

## Revenue Memorandum Order No. 32-2018

- ❖ One (1) Ela shall be issued for each taxable year to include all internal revenue tax liabilities of the taxpayer, except when a specific tax type had been previously examined.
- ❖ The audit of cases issued under this Order shall be conducted without the field investigation of ROs (Assessment) of the OAS in the Assessment Division of the Regional Offices.
- ❖ The Ela, together with the Notice for the Presentation/ Submission of Documents/ Records with checklist of requirements may be delivered personally to the taxpayer by a BIR employee duly authorized for the purpose, who may be the RO assigned to the case or another employee with a written authorization, or delivered through a courier company.

## Revenue Memorandum Order No. 32-2018

- ❖ The concerned taxpayer shall be given ten (10) days from the receipt of the Notice to present/ submit the required documents and records.
- ❖ In case the taxpayer does not comply with the Notice, a reminder letter shall be sent immediately after the lapse of the ten-day period.
- ❖ In case of the requested documents/ records are not presented, within five (5) days from receipt of the reminder letter, a memorandum report shall be prepared recommending the issuance of subpoena duces tecum (SDT). **No further extension is allowed.**

## What is a Letter of Authority?

A **Letter of Authority (LA)** is an official document that authorizes a BIR Revenue Officer to examine a taxpayers' books of accounts and other accounting records in order to determine his correct internal revenue tax liabilities.

## Electronic Letter of Authority

- ❖ Manual LAs (BIR Form 1965) issuance has been discontinued effective July 1, 2010.
- ❖ Electronic Letter of Authority (eLA) BIR Form 1966 through the Letter of Authority Monitoring System (LAMS) under RMO 62, 69 and 44-2010.
- ❖ No need for revalidation of eLA for failure of the RO to complete the audit within the prescribed period.

## RMO 44-2010: Signatory to the eLA

Investigating Office	Approving Official
Revenue District Office	Regional Director
LTS and its Divisions	Assistant Commissioner (ACIR) - LTS
ES and its Divisions	Deputy Commissioner – Legal and Inspection Group (DCIR-LIG)
Task Forces and Special Teams	CIR or any authorized Bureau Official

## RMO 44-2010: Validity Period of a Letter of Authority

- ❖ A Letter of Authority must be served to the concerned taxpayer within thirty (30) days from its date of issuance, otherwise, it shall become null and void, unless revalidated.

## Power Of CIR To Obtain Information And To Summon, Examine And Take Testimony Of Persons

When after reasonable demands, certain documents, information or records are not forthcoming during the examination, the BIR may issue subpoena to the taxpayer and/or other person in possession of the same to produce them.

### Types of subpoena:

#### 1. Subpoena duces tecum

- A summon upon the taxpayer or other persons compelling them to produce, under penalty of neglect, certain documents sought therein.

#### 2. Subpoena ad testificandum

- A summon upon a person to appear and to give oral testimony.

## Other Types of Audit Notice

A **Tax verification notice** authorizes evaluation or verification of tax on one-time transaction (ONETT) cases such as estate tax, donor's tax, and capital gains tax.

A **Letter notice** is a communication from the BIR national office informing the taxpayer of a finding of significant discrepancy between sales/purchases reported in his tax return and information obtained by the BIR from third parties.

## RMO 26-2010: Preparation of List of Assets to be Prepared by the Revenue Officers

- ❖ This order is issued to institute a system for the development of a Data Warehouse that contain the information of the assets of taxpayers under an investigation/verification that may be used in the future to enforce collections.

## RMO 26-2010: Preparation of List of Assets to be Prepared by the Revenue Officers

- ❖ The Revenue Officer (RO) shall determine all the assets of a taxpayer being investigated, such as type of assets, location of assets, bank assets maintained, etc., to be accomplished with **BIR Form No. 0804 (RMO 26-2010, Annex A)**, which shall be utilized after proceeding of a tax case in favor of the government.

## RMO 26-2010: Preparation of List of Assets to be Prepared by the Revenue Officers

- ❖ The List of Assets reported in BIR Form No. 0804 shall be encoded on **Information Systems Group(ISG)** by the RO **within one (1) month** from the date of service of the LA/TVN (Letter of Authority/ Tax Verification Notice).



## NOTICE OF INFORMAL CONFERENCE (Reinstated under RR 7-2018)

- A written notice (by the Revenue District Office or by the Special Investigation Division, in the case of the Revenue Regional Offices; or by the Chief of Division, in the case of BIR National Office) informing a taxpayer that the findings of the audit conducted on his books of accounts and accounting records indicate that additional taxes or deficiency assessments have to be paid
- This is called for in order to afford the taxpayer with an opportunity to present his side of the case.

## NOTICE OF INFORMAL CONFERENCE (Reinstated under RR 7-2018)

*If the taxpayer fails to respond within 30 days from the date of receipt of the notice for informal conference, he shall be considered in default.* The case will then be endorsed within 7 days to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative, as the case may be, for appropriate review and issuance of a deficiency tax assessment, if warranted.

## Preliminary Assessment Notice (PAN)

A **PAN** is a written communication issued by the Regional Assessment Division or any other concerned BIR office informing the taxpayer of his obligation for deficiency tax based on the audit findings of a revenue officer.

The taxpayer has up to **15 days from the receipt of the PAN** to reply to the proposed assessment. It must be noted that the PAN is not yet an assessment and does not establish a legal claim on the part of the government.

## Preliminary Assessment Notice (PAN)

If the taxpayer's agrees to the findings in the PAN and pays the tax, the BIR cancels the docket and a termination letter or closure letter is sent to the taxpayer.

If the taxpayer merely responds that he disagrees with the findings of deficiency, a *Formal Letter of Demand and Final Assessment Notice (FLD/FAN)* calling for payment of the tax deficiency will be issued to the taxpayer.

## Formal Letter of Demand and Final Assessment Notice (FLD/FAN)

An **FLD/FAN** is a **final** declaration of deficiency tax issued to a taxpayer:

- a. who defaulted by failing to respond to the PAN within 15 days of its receipt.
- b. whose reply to the PAN is unmeritorious.

The FLD/FAN shall be issued within **15 days** from the filing or submission of the taxpayer's response or after 15 days from the issuance of the PAN in case the taxpayer failed to respond.

The issuance of an FLD/FAN to the taxpayer is tantamount to a denial of the taxpayer's reply to the PAN.

## Requisites of a valid assessment (FLD/FAN)

1. The assessment must be served within the prescriptive period.
2. The assessment must inform the taxpayer of the discovery of unpaid or still unpaid tax coupled with a demand of the same including penalties.
3. The assessment must show in detail the facts and the law, rules and regulations, or jurisprudence on which the assessment is based.
4. The assessment must be served through registered mail or by personal delivery and acknowledged by the taxpayer or his duly authorized representative.
5. The assessment must be preceded by a pre-assessment notice.

## Instances where no PAN is required

The PAN is required as a matter of procedural due process for the taxpayer to be apprised of his obligation. Hence, a FLD/FAN is generally void without a PAN.

However, a PAN is not required in the following cases:

1. When the finding of deficiency tax is result of mathematical error in the computation of the of the appearing on the face of the tax return filed by the taxpayer;
2. When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent,

## Instances where no PAN is required

3. When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or
4. When the excise tax due on excisable articles has not been paid;
5. When an article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

*An FLD/FAN is issued outright in the aforementioned exceptional cases.*

## Jeopardy Assessment

Jeopardy assessment is one made by an authorized revenue officer ***without the benefit of a complete or partial audit*** in light of the officer's belief that the assessment and collection of a deficiency tax will be jeopardized by the ***delays*** caused by the taxpayer to comply with audit and investigation requirements to present his book of accounts and pertinent records or substantiate all of the deductions, exemptions or credit claimed in his return.

## Best Evidence Obtainable Rule: When the BIR may Properly Apply the Rule

- ❖ Where a taxpayer refuses to present its books of accounts and other accounting records, the BIR is justified to disallow 50% of the claimed deductions under the Best Evidence Obtainable Rule.
- ❖ The rule applies when a tax report required by law for the purpose of assessment is not available or when the tax report is incomplete or fraudulent.

## Suspension of the Statutes of Limitation

The prescriptive period for assessment and collection may be suspended under the following circumstances:

- a. Request for reinvestigation of the taxpayer which is granted by the CIR
- b. When the Commissioner is prohibited from making an assessment or from beginning distraint or levy or proceedings in the court<sup>1</sup>
- c. When the taxpayer cannot be located in the address given by him<sup>2</sup>
- d. When the warrant of distraint or levy is served and no properties can be located
- e. When the taxpayer is out of the Philippines

## Protest To The Assessment

The FLD/FAN may be administratively protested by the taxpayer by filling a written protest to the BIR within 30 days upon receipt thereof.

### Types of Taxpayer's Protest:

- a. ***Request for reconsideration*** is a plea for reevaluation of an assessment on the basis of existing records without need of additional evidence which may involved a question of facts or of law or both.
- b. ***Request for re-investigation*** is a plea of reevaluation of an assessment on the basis of newly discovered or additional evidence that the taxpayer intends to present in the reinvestigation which may also involve a question of fact or of law or both.

## Protest To The Assessment

In cases of a request for re-investigation, taxpayers are mandatorily required to **submit relevant supporting documents within 60 days** from the date of filing of the protest..

The BIR **assessment division** will settle question of facts. The BIR **legal division** will settle question of law.

The failure of the taxpayer to seasonably interpose a valid protest within 30 days shall make the assessment **final, executory and demandable** and no request for reconsideration or reinvestigation shall be granted.

## Finality Of Assessment Of Undisputed Issues

If the taxpayer disputes or protests only against the validity of some issues raised in the assessment, the assessment attributable to the **undisputed issue** or issues shall become final, executory and demandable.

If the taxpayer **failed to state the facts, the applicable law, rules and regulations** or jurisprudence in support of his protest against certain issues, the same shall be considered undisputed issues, in which case, the assessment attributable thereto shall become final, executory and demandable.

## Requirements For The Validity Of A Protest:

1. The taxpayer must indicate the nature of protest (i.e. request reconsideration or request for reinvestigation) (*See CIR vs. Philip Global Communications, GR No. 167146, October 31, 2006*)
2. The taxpayer must state the date of the assessment notice.
3. The taxpayer should state the facts, the applicable law, rules regulations or jurisprudence on which the protest is based.
4. The protest must be filed by the taxpayer or his/her duly authorized representative, in person or through registered mail with return or with the concerned Regional Director, Assistant Commissioner –LT, Assistant Commissioner – Enforcement Service, as the case may be (*39-2013*)
5. All relevant documents must be submitted within 60 days from the filing of the request for reinvestigation.

## Due Process in Assessment

- ❖ FAN issued before the lapse of the 15-day period to protest/reply is a violation of right to due process.
  - It does not give the taxpayer the opportunity to respond to the PAN
- ❖ However A PAN, unlike FAN, may or not may be protested to by the taxpayer, and the fact of non-protest shall not render the PAN final and unappealable.

## Final Decision on Disputed Assessment (FDDA)

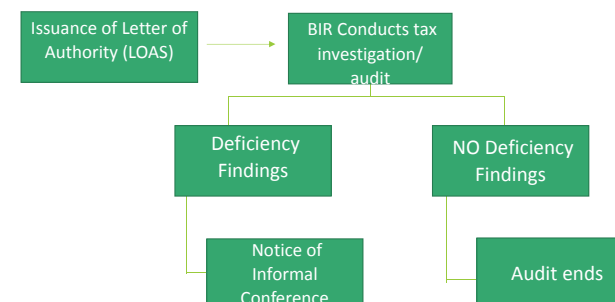
The FDDA of the CIR Representative will be communicated to the taxpayer within 180 days from the filling of his protest.

### Resolution of the Protested Assessment:

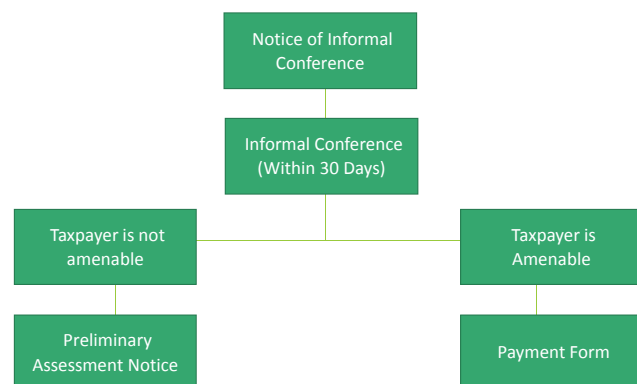
<i>If the Protested assessment is</i>	<i>The assessment is</i>
a. Resolved in favor of the taxpayer	Cancelled
b. Resolved with reduction of liability	Revised
c. sustained	Enforced

After FDDA, the taxpayer may appeal within 30 days with the CTA or with the CIR for reconsideration. This remedy may also be availed if no decision is made within 180 days from the protest

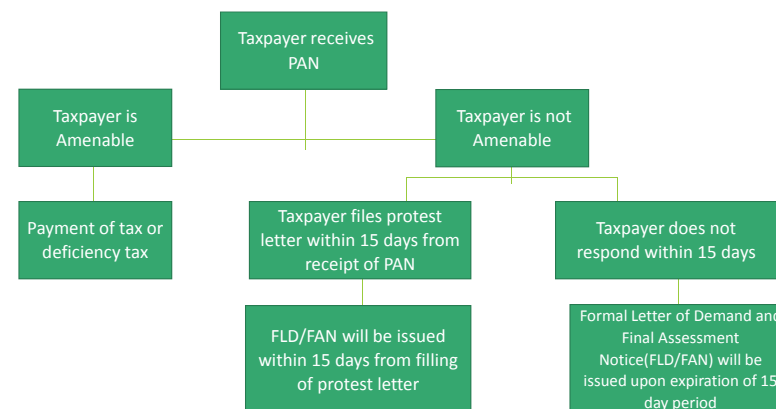
## RR No. 18-2013 and RR No. 7-2018: The New Assessment Process



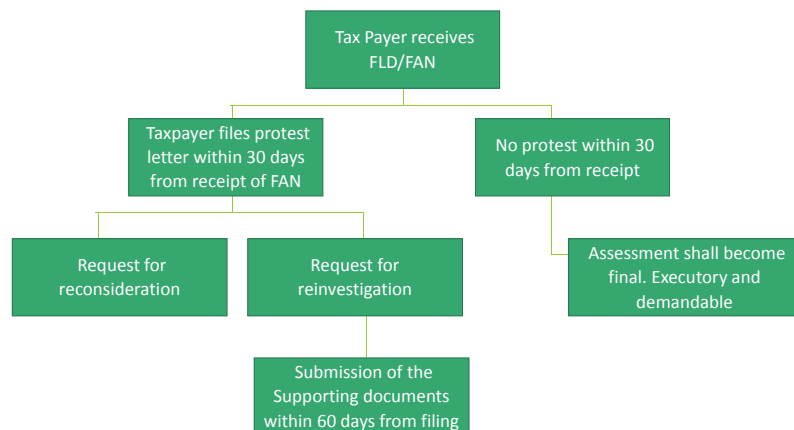
## RR No. 18-2013 and RR No. 7-2018: The New Assessment Process



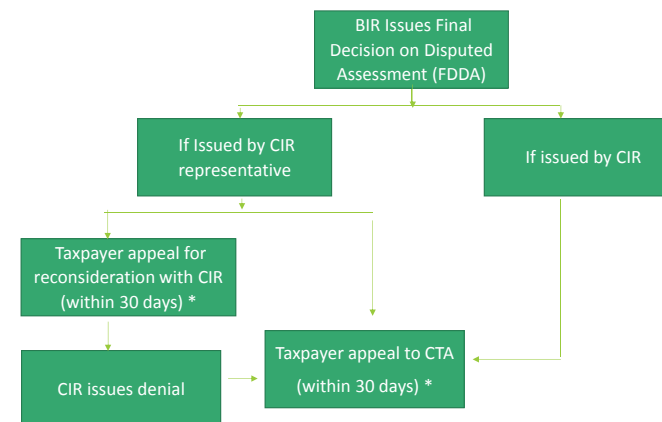
## RR No. 18-2013 and RR No. 7-2018: The New Assessment Process



## RR No. 18-2013 and RR No. 7-2018: The New Assessment Process



## RR No. 18-2013 and RR No. 7-2018: The New Assessment Process



\* May be availed if no decision is made within 180 from the protest

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## Collection

Collection will be enforced by the government once the assessment achieves finality under any of the following instances:

- A. When the taxpayer defaulted in his administrative remedies
  - Failure of the taxpayer to reasonably protest the FLD/FAN
- B. Denial of the taxpayer's protest by the CIR or his authorized representative.
- C. When the assessment is upheld by the court.

*(Sec. 11, RA 1125, as amended by RA 9282)*

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## Government Remedies to Enforce Collection

1. Imposition of tax lien.
2. Seizure of the taxpayer's properties (distrain or levy)
3. Auction sale and or forfeiture of taxpayer's properties
4. Filing of civil criminal action against the taxpayer
5. Imposition of administrative penalties and fines
6. Suspension of business operations
7. Entering into a tax compromise with the taxpayer.

## Stages of Collection

1. Preliminary Collection Letter
2. Final Notice Before Seizure Letter
3. Warrant of Dstraint/ Levy or Garnishment
4. Research of Taxpayer properties
5. Notice of Tax Lien and or Notice of Tax Levy
6. Seizure of properties
7. Auction sale and or/ forfeiture of properties
8. Filing of civil or criminal auction

## Preliminary Collection Letter

Once the assessment received finality, the BIR Collection Division will send the taxpayer a **Preliminary collection letter** signed by the RDO who has jurisdiction over the taxpayer.

The taxpayer may pay the assessment either by:

- a. lump sum payment
- b. installment payment
- c. compromise settlement

Note: Installment payment and compromise settlement are subject to approval by the BIR.

## Final Notice Before Seizure

Within 10 days from the issuance of the Preliminary Collection Letter, the BIR sends the taxpayer the *Final Notice before Seizure Letter*.

If the taxpayer ignores the final notice, the BIR will resort to enforcement of administrative summary remedies.

### Summary of Remedies under the NIRC:

1. **Seizure of taxpayer's property**
  - a. Dstraint
  - b. Levy
2. **Civil or criminal action**

## Collection Remedies

**Dstraint** – the seizure by the government of tangible or intangible personal property of the taxpayer to enforce the collection of taxes.

**Levy** – the seizure by the government of real properties of the taxpayer to enforce the collection of taxes.

**Garnishment** – the seizure or dstraint of interests such as bank accounts and credits owned by the taxpayer

## WARRANT OF DISTRAINT/LEVY

The *Warrant of Distraint and or Levy (WDL)* or a *Warrant of Garnishment* is served to the taxpayer after his failure to respond to the Final Notice.

### Limitation of Warrant of Distraint or Levy

1. Distraint or levy shall not be availed of where the amount of tax is not more than P100.
2. The WDL shall not be sent earlier than 90 days from the date the assessment has become due and demandable.

## Distraint of Personal Property

### *Who shall conduct the distraint?*

- a. *The CIR or his duly authorized representative* – if the amount involved is in excess of P1M.
- b. *The revenue district officer* – if the amount involved is P1M or less.

### *Extent of properties to be distrained*

Personal properties such as goods, chattel, effects, stocks and other securities, debts, credits, bank accounts and interest or rights to personal properties shall be seized in sufficient quantity to cover the following:

- a. Tax due
- b. Penalties and interest
- c. Expenses of distraint
- d. Cost of selling the properties.

## Collection Remedies

### **To whom is the warrant of distraint or garnishment is served?**

1. *For goods, chattels, effects, or other personal properties* – to the possessor of the goods distrained
2. *For stocks and other securities* – to the taxpayer and upon the president, manager, treasurer or responsible officer of the corporation, company or association which issued the said stocks
3. *For debts and credits* – to the person owning the debts or having in possession or under his control such credit, or with his agent
4. *For bank accounts* – to the president, manager, treasurer, cashier or other responsible officials.

## Levy on Real Property

The revenue officer shall prepare a duly authenticated certificate showing the name of the taxpayer and the amount of tax and penalty due from him and indicate therein the description of the property upon which the levy is made. Said certificate shall operate with the force of a legal execution throughout the Philippines (*See Sec. 207 (B), (NIRC).*)



### ***Auction Sale Of Seized Property***

Seized properties will be sold at auction sales if the taxpayer did not settle the delinquent tax. Within 20 days from the levy, the revenue officer conducting the proceeding shall advertise the property for auction sale for at least 30 days. The property shall be awarded to the highest bidder.

The proceeds of the sale shall be used to satisfy the taxpayer's unpaid tax liabilities. The excess proceeds of the sale will be return to the taxpayer.

### **Forfeiture Of Taxpayer's Property**

When the amounts offered by bidders in two consecutive auction sales fail to raise a sufficient amount to cover the taxpayer's liability, the government will forfeit the property. Title to forfeited properties will be consolidated in the name of the Republic of the Philippines.

#### **Taxpayer's right of redemption**

The taxpayer has up to one year from the date of auction sale or forfeiture within which to redeem the property.

### **Civil Or Criminal Auction**

The government may ***alternatively or simultaneously*** pursue filing civil or criminal action against the taxpayer with the summary remedies of distraint or levy (*See Sec. 205, NIRC*).

### **Prescriptive Period Of Collection**

The government has **5 years from the date of release** of the final assessment to the taxpayer to make collection (*Bank of the Philippine Islands vs. CIR, G.R. No.139736*).

When the demand letters is undated, the 5-year prescriptive period is counted from the **date of receipt** of the assessment *notice* (*Jardine Pacific Finance vs. CIR, CTA Case No. 6195*)

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## Prescriptive Period Of Collection

### Illustration 1

On July 15, 2015, Mr. A filed his 2014 income tax return which should have been filed April 15, 2015. He paid the tax on August 15, 2015. The BIR issued a deficiency assessment on August 2, 2017.

*The deadline to enforce collection shall be on or before August 2, 2022.*

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## Prescriptive Period Of Collection

### Illustration 2

On March 3, 2015, the BIR sent an undated assessment letter. The assessment covered the unpaid estate tax of a decedent which should have been paid March 5, 2014. The estate administrator received the assessment on March 18, 2015.

*The deadline to enforce collection shall be on or before March 18, 2020 since the assessment is undated.*

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## Prescriptive Period Of Collection

### Illustration 3

The taxpayer did not file an income tax return for the year 2001. The BIR discovered the non-filing on May 4, 2008. The BIR issued a delinquency assessment on July 15, 2010.

*The deadline to enforce collection is on or before July 15, 2015.*

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## BIR Denial Or Adverse Decision

If a duly authorized representative of the CIR denies the protest or issues an adverse decision, the taxpayer may interpose either a/an:

- a. Judicial Appeal** – file a petition for review with the Court of Tax Appeals (CTA) within 30 days from the receipt of adverse decision.
- b. Administrative Appeal** – file a motion for reconsideration with the CIR within 30 days from the receipt of the adverse decision.

The **final decision (FDDA)** of the CIR may be appealed to the CTA within 30 days from receipt of the adverse decision.

### BIR Inaction within the 180-day Period

The BIR may not act on the protest within 180-day period. The taxpayer may either:

- a. Wait for the BIR decision after the lapse of 180-day period, or
- b. File a petition for review with the CTA within 30-days from the lapse of the 180-day period (*Judicial appeal*).

These two options are **mutually exclusive**. Hence, if the taxpayer opted for the first option, the taxpayer must wait for BIR action and cannot proceed to the CTA until the BIR denies his administrative appeal.

### Court Adverse Ruling

Upon receipt of an adverse ruling from the CTA, the taxpayer may, within 15 days:

- a. File a motion for reconsideration or new trial under the same division, or

An adverse decision of the CTA in division may be appealed to the CTA *en banc* within 15 days. The CTA may grant an additional 15 day leeway after payment of the docket fee. An adverse decision of the CTA *en banc* may be appealed within 15 days to the Supreme Court.

- b. File a petition for review on certiorari to the Supreme Court.

An adverse ruling from the Supreme Court may be subject to a motion for reconsideration after which the final decision can no longer be appealed.

## Civil Penalties – RR 18-2013

### Late Filing and Late Payment of the Tax

#### Illustration:

Income tax for the calendar year 1998 due for filing on April 15 1999 but the taxpayer voluntarily filed his return , without notice from the BIR, only on April 15, 2000. The tax due per return amounts to P100,000.00.

## Civil Penalties – RR 18-2013

### Late Filing and Late Payment of the Tax

Income tax due per return	P 100,000.00
Ad 25% surcharge for late filing and late payment ( P 100,000.00 times 25%)	P 25,000.00
20% int. p.a. from 4-15-99 to 4-15-00	<u>20,000.00</u>
Total Amount due (excluding suggested compromise for late filing and late payment of the tax)	<u>P 145,000.00</u>

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## Civil Penalties – RR 18-2013 Payment to the Wrong Venue

- The taxpayer's 1998 income tax return is required to be filed through the authorized agent bank under the jurisdiction of RDO East Makati. But, without prior authorization from the BIR, the taxpayer filed his tax returns and paid the tax through the authorized agent bank under the jurisdiction of RDO Davao City. Tax due paid per return is P 100,000.00.

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## Civil Penalties – RR 18-2013 Payment to the Wrong Venue

Income tax due per return	P 100,000.00
Add: 25% Surcharge	<u>P 25,000.00</u>
Total amount due	P 125,000.00
Less: Amount paid	<u>P 100,000.00</u>
Amount still due	<u>P 25,000.00</u>

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## Civil Penalties – RR 18-2013 Late Filing and Late Payment Due to Taxpayer's Willful Neglect

### Illustration:

The taxpayer did not file his income tax return for the calendar year 1997 which was due for filing on April 15, 1998. He was notified by the BIR of his failure to file the tax return, for which reason, he filed his tax return and paid the tax, only after the said notice, on June 30, 1999. The tax due per return is P100,000.00

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## Civil Penalties – RR 18-2013 Late Filing and Late Payment Due to Taxpayer's Willful Neglect

Income tax due per return	P100,000.00
Add: 50% surcharge for willful neglect to file the return and late payment of the tax ( P100,000.00 times 50%)	P50,000.00
20% int. p.a. fr 4-15-98 to 6-30-99	<u>P24,167.00</u> <u>P 74,167.00</u>
Total amount due ( excluding suggested compromise for late filing and late payment of the tax)	<u>P 174,167.00</u>

## Civil Penalties – RR 18-2013

### Penalty or Penalties For Deficiency Tax

As a rule, no surcharge is imposed on deficiency tax and on the basic tax. However, if the amount due inclusive of penalties is not paid on or before the due date stated on the demand letter, the corresponding surcharge shall be imposed.

**Illustration No 1:**

Taxpayer filed on time his income tax return for calendar year 1997 and paid P100,000.00 on April 15, 1998. Upon pre-audit of his return, it was disclosed that he erroneously computed the tax due. The correct amount of tax due is P120,000.00. The taxpayer is assessed for deficiency income tax in a letter of demand and assessment notice issued on June 30, 1999.

## Civil Penalties – RR 18-2013

### Penalty or Penalties For Deficiency Tax

Tax due per pre-audit	P120,000.00
Less: Amount assessed and paid per tax return filed	<u>P100,000.00</u>
Deficiency income tax	P20,000.00
Add: 20% int. p.a. from 4-15-98 to 6-30-99	<u>4,833.00</u>
Amount still due	<u>P24,833.00</u>

## Civil Penalties – RR 18-2013

### Illustration:

ABC CORPORATION filed its income tax return for calendar year 1997 and paid on time its income tax shown thereunder, amounting to P100,000.00. Said taxpayer was investigated. The income tax due after investigation amounts to P170,000.00. Failing to protest on time against the preliminary assessment notice, a formal letter of demand and assessment notice was issued on May 31, 1999, requiring payment of the assessment not later than June 30, 1999.

## Civil Penalties – RR 18-2013

Income tax due per investigation	P170,000.00
Less: Income tax paid per return	<u>P100,000.00</u>
Deficiency income tax	P70,000.00
Add: 20% int. p.a. from 4-15-98 to 6-30-99	<u>16,917.00</u>
Amount still due	<u>P86,917.00</u>

## Civil Penalties – RR 18-2013

### Illustration :

XYZ CORPORATION filed its income tax return for calendar year 1997 with a net taxable income of P500,000.00. At the applicable income tax rate 35% for the year 1997, its income tax amounted to P175,000.00. However, upon investigation, it was disclosed that its income tax return was false or fraudulent because it did not report a taxable income amounting to P500,000.00. On its net income of P1,000,000.00, per investigation, the income tax due is P350,000.00. Deducting its payment per return filed, the deficiency, excluding penalties, amounted to P175,000.00. It was duly informed of this finding through a Preliminary Assessment Notice. Failing to protest on time against the preliminary assessment notice, a formal letter of demand and assessment notice was issued on May 31, 1999 calling for payment of the deficiency income tax on or before June 30, 1999.

## Civil Penalties – RR 18-2013

Income tax due per investigation	P350,000.00
Less: Income tax paid per return	<u>P175,000.00</u>
Deficiency income tax	P175,000.00
Add: 50% surcharge for filing a fraudulent or false return (P175,000.00 times 50%)	P87,500.00
20% int. p.a. fr. 4-15-98 to 6-30-99	<u>P42,291.67</u>
<b>Total Amount due</b>	<b><u>P304,791.67</u></b>

## Interest on Approved Installment Payment In Case Extended Payment of the Tax is Duly Authorized

DEF CORPORATION, due to financial incapacity, requested that it be allowed to pay its income tax liability per return for calendar year 1998, in the amount of P1,000,000.00, in four (4) monthly installments, starting April 15, 1999. Its request has been duly approved pursuant to SEC. 53 of the Tax Code.

## Interest on Approved Installment Payment In Case Extended Payment of the Tax is Duly Authorized

Income tax due per return	P 1,000,000.00
Less: 1st installment of the tax on or before 4-15-99	<u>250,000.00</u>
Balance as of 4-15-99	750,000.00
Add: 20% int. p.a. fr 4-15-99 to 5-15-99 (P750,000.00 times 0.166667)	<u>12,500.03</u>
Amount due on 5-15-99	P 762,500.03
Less: 2nd installment on 5-15-99 (P250,000.00 plus P12,500.03 interest)	<u>262,500.03</u>
Balance as of 5-15-99	P 500,000.00

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## Interest on Approved Installment Payment In Case Extended Payment of the Tax is Duly Authorized

Balance as of 5-15-99	P	500,000.00
Add: 20% int. p.a. fr 5-15-99 to 6-15-99 (P500,000.00 times 0.166667)		8,333.35
Amount due on 6-15-99		508,333.35
Less: 3rd installment on 6-15-99 (P250,000.00 plus P8,333.35 interest)		258,333.35
Balance as of 6-15-99	P	250,000.00
Add: 20% int. p.a. fr 6-15-99 to 7-15-99 (P250,000.00 times .0166667)		4,166.68
4th and final installment on 7-15-99	P	254,166.68

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## Imposition Of Interest Penalty – Sec 249/RR 21-2018

- There shall be assessed and collected on any unpaid amount of tax, interest at the **rate of double the legal interest rate** for loans or forbearance of any money in the absence of an express stipulation as set by the Bangko Sentral ng Pilipinas from the date prescribed for payment until the amount is fully paid
- The legal interest rate as set by the BSP Memorandum No. 799 of 2013 shall be **6%**, therefore the interest is **12%**.
- In no case shall the deficiency and the delinquency interest be **imposed simultaneously**

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## Imposition Of Interest Penalty - RR 21-2018

**Deficiency interest** is imposed on any deficiency tax due, which will be assessed and collected from the prescribed date of its payment until full payment or upon issuance of a notice and demand by CIR or his representative, whichever comes first

**Delinquency Interest** imposed on the failure to pay:

- The amount of the tax due on any return to be filed; or
- The amount of the tax due for which no return is required; or
- A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner or any authorized representative until the amount is fully paid, which interest shall form part of the tax.

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## Imposition Of Interest Penalty - RR 21-2018

- **Additional provision:**
  - Deficiency and delinquency interest shall in no case be imposed simultaneously
- **Illustration 1:** Mr. A has been assessed deficiency income tax of P 1,000,000, exclusive of interest and surcharge, for taxable year 2018. The tax liability has remained unpaid until the lapse of June 30, 2020, the deadline for payment stated in the notice issued by the Commissioner. Payment was made by the taxpayer on February 10, 2021.

## Imposition Of Interest Penalty - RR 21-2018

The applicable interest shall be computed as follows:

Basic Tax Due – Income Tax		P 1,000,000
Add: 25% Surcharge for late payment	P 250,000	
12% Deficiency Interest from April 16, 2019 to June 30, 2020 (442 days)	145,315.07	395,315.07
<b>Total Amount Due, June 30, 2020</b>		<b>P 1,395,315.07</b>
Add:		
12% Delinquency Interest from July 1, 2020 to Feb. 10, 2021 (225 days; based on the total amount due of P 1,395,315.07 as of June 30, 2020)		103,215.09
<b>Total Amount Due, February 10, 2021</b>		<b><u>P 1,498,530.16</u></b>

## Transitory Provision – RR 21-2018

- In cases where the tax liability/ies or deficiency tax/es became due before the effectivity of the TRAIN Law on January 1, 2018, and where the full payment is accomplished after the effectivity date of the aforementioned law, the interest rate shall be applied as follows:

Period	Applicable Interest Type And Rate
For the period up to December 31, 2017	Deficiency and/or delinquency interest at 20%
For the period starting January 1, 2018 until full payment of tax liability.	Deficiency and/or delinquency interest at 12%.

- \* The double imposition of both deficiency and delinquency interest prior to its amendment will still apply in so far as the period between the prescribed date of payment until December 31, 2017.

## Illustration: Transitory Provision

- Illustration 2:** A company has been assessed deficiency income tax of P 1,000,000.00, exclusive of interest and surcharge, for taxable year 2015. The tax liability has remained unpaid despite the lapse of June 30, 2017, the deadline for payment stated in the notice and demand issued by the Commissioner. Payment was made by the taxpayer only on February 10, 2018.

## Solution: Transitory Provision

Basic Tax Due – Income Tax		P 1,000,000
Add: 25% Surcharge for late payment	P 250,000.00	
20% Deficiency Interest from April 16, 2016 to June 30, 2017 (441 days)	241,643.84	491,643.84
<b>Total Amount Due, June 30, 2017</b>		<b>P 1,491,643.84</b>
Add:		
20% Deficiency Interest from July 1, 2017 to December 31, 2017 (184 days based on basic tax of P 1,000,000)	P 100,821.92	
20% Delinquency Interest from July 1, 2017 to December 31, 2017 (184 days based on total amount due of P 1,491,643.84 as of June 30, 2017)	150,390.39	
12% Delinquency Interest from January 1, 2018 to Feb. 10, 2018 (41 days; based on the total amount due of P 1,491,643.84 as of June 30, 2017)	20,106.54	271,318.85
<b>Total Amount Due, February 10, 2018</b>		<b><u>P 1,762,962.69</u></b>



## Basis for Offer of Compromise Settlement

### 1. Financial incapacity

- Individual Taxpayer – 10%
- Zero or negative net worth – 10%
- Dissolved corporations – 20%
- Non-operating for 3 years or more – 10%
- Non-operating for less than 3 years – 20%
- Original capital is impaired by at least 50% - 40%
- Declared insolvent or bankrupt — 20%

### 2. Doubtful validity – 40%

- Taxpayer may request for a compromise rate lower than forty percent (40%), subject to the prior approval of NEB

## Approval of Offer of Compromise

### Compromise settlements within the National Office

- By a majority of all the members of the National Evaluation Board.  
However, all approvals shall have the concurrence of the Commissioner

### Within the Regional Offices

- Offers of compromise of assessments issued by the Regional Offices involving basic deficiency taxes of P500,000 or less and for minor criminal violations
- By Regional Evaluation Board discovered by the Regional and District Offices, shall be subject to the approval by the Regional Evaluation Board (REB)

## Composition of NEB and REB

### ❖ NEB -

The Commissioner and the four (4) Deputy Commissioners.

### ❖ REB -

Regional Director — Chairman

Members: Assistant Regional Director, Chief Legal Division, Chief Assessment Division, Chief Collection Division and Revenue District Officer having jurisdiction over the taxpayer-applicant

## Payment of Compromise Settlement

- The compromise offer shall be paid by the taxpayer upon filing of the application for compromise settlement. No application for compromise settlement shall be processed without the full settlement of the offered amount.

## Cases which may be Compromised

1. Delinquent accounts
2. Cases under administrative protest after issuance of the Final Assessment Notice to the taxpayer which are still pending in the concerned BIR offices
3. Civil tax cases being disputed before the courts
4. Collection cases filed in courts
5. Criminal violations, other than those already filed in court or those involving criminal tax fraud

## Exception Cases

1. Withholding tax cases, unless the applicant-taxpayer invokes provisions of law that cast doubt on the taxpayer's obligation to withhold;
2. Criminal tax fraud cases confirmed as such by the Commissioner of Internal Revenue or his duly authorized representative;
3. Criminal violations already filed in court;
4. Delinquent accounts with duly approved schedule of installment payments;

## Exception Cases

5. Cases where final reports of reinvestigation or reconsideration have been issued resulting to reduction in the original assessment and the taxpayer is agreeable to such decision by signing the required agreement form for the purpose.
6. Cases which become final and executory after final judgment of a court, where compromise is requested on the ground of doubtful validity of the assessment; and
7. Estate tax cases where compromise is requested on the ground of financial incapacity of the taxpayer.

## Sample Computation of Compromise Settlement

Final Assessment					
Tax Type	Basic Tax	Surcharge	Interest	Compromise	Total
IAET	2,052,138	513,034	817,482		3,382,654
Income	1,087,095	-	596,860	-	1,683,955
VAT	728,779	-	432,076	-	1,160,855
WE	461	-	276	-	737
WC	365,681	-	218,808	-	584,489
DST	288,361	72,090	174,281	-	534,732
Compromise	-	-	-	60,000	60,000
Total	4,522,515	585,125	2,239,782	60,000	7,407,421

### Computation of Compromise Settlement

Based on Financial Incapacity	Basic	4,522,515
	Rate	40%
	Compromise Amount	1,809,006

## Authority of the CIR to Abate Taxes

1. Under Section 204(B) of the NIRC, the CIR is authorized to abate or cancel tax liability under the following conditions:
2. The tax or any portion of it which appears to be unjustly or excessive assessed.
3. The administrative or collection costs involved do not justify the collection of the amount due.
4. The taxpayer is dead, leaving no distrainable or leviable property.
5. The taxpayer is abroad leaving no forwarding address with no distrainable or leviable property.
6. The taxpayer is a corporation who has already dissolved and subscribed shares of stock have been fully paid.
7. The tax case already prescribed.