

# 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

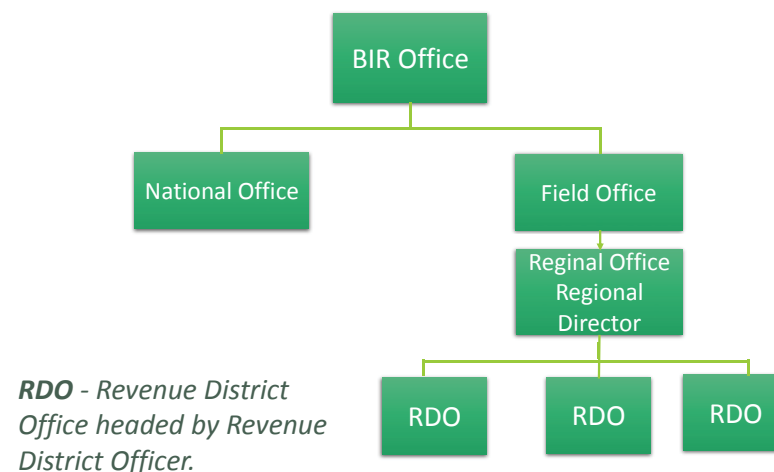
1. To assess and collect all national internal revenue, taxes, fees and charges;
2. To enforce all forfeitures, penalties and fines connected therewith;
3. To execute judgements in all cases decided in its favor by the Court of Tax Appeals and the ordinary courts;
4. To give effect to and administer 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.