



R.G. Manabat & Co.

Don't Forget the Date

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As a husband and a father, I believe that it is a cardinal sin to forget: (1) your wife's birthday; (2) your child's birthday; and, (3) your wedding anniversary. Thus, I make sure to mark these dates in my calendar at the beginning of every year. Last 30 July 2018, my wife and I celebrated our second wedding anniversary. Despite our tight schedules, we set aside time to celebrate this important date. But is a "date" really that important? Resoundingly, I say yes - even in cases outside of wedlock.

In letter writing, the date can be used to prove when it was sent or prepared. The date can also be used to identify a document. In purchasing food products, the expiry date will let you know whether or not an item is still edible, thus, eliminating the fear of ending up on a hospital bed after consumption.

How about in the case of assessments issued by the Bureau of Internal Revenue (BIR)? Will an undated albeit duly received assessment notice be considered void?

In 28 June 2018, the Court of Tax Appeals (the CTA) opines so in its 25-page decision in the case of Lorenzo Shipping Corporation vs. Commissioner of Internal Revenue. The CTA held that a Final Assessment Notice (FAN), even if duly received by the taxpayer, is void if the date of its issuance is not reflected in the issued assessment.

In the said case, Lorenzo Shipping Corporation (the LSC or the Company) received on 28 April 2013 from the BIR – Large Taxpayers Service, Regular Large Taxpayers Audit Division 1 an undated FAN assessing the Company for an alleged deficiency income tax, value-added tax, withholding tax on compensation, expanded withholding tax, fringe benefits tax and documentary stamp on its taxable year 2008. In sum, the amount of deficiency tax assessment included in the said FAN totaled to a whopping amount of Php2,008,472,584.91 inclusive of surcharges, interest and compromise penalties.

Upon the receipt of the deficiency tax assessment, the Company filed a protest to the abovementioned FAN *via* registered mail. However, the said protest was denied by the BIR. Due to the said denial, the Company filed a petition for review with the CTA.

In its decision, the CTA granted LSC's Petition for Review for the cancellation of the entire deficiency tax assessment issued against it by the BIR. The CTA ruled that the BIR's FAN issued against the Corporation was not a valid formal assessment notice since it did not contain a specific date on when to pay the alleged deficiency taxes.

Further, the CTA also quoted the last paragraph reflected in the undated FAN issued by the BIR to the Company which states that:

"In view thereof, you are requested to pay your aforesaid deficiency internal revenue tax liabilities through the duly authorized agent bank in which you are enrolled using the (BIR Form 0605) attached herewith within the time shown in the enclosed assessment notice..."

The CTA stressed that after its scrutiny of the Audit Result/Assessment Notice referred to in the FAN, there is no *indicia* of any definite period or a date certain within which the Company must pay the alleged deficiency tax assessment since the due dates on the Assessment Notices for all the assessments were left blank.

To support its decision, the CTA cites as its basis the pronouncement of the Supreme Court (SC) in the case of Commissioner of Internal Revenue v. Pascor Realty and Development Corporation (G.R. No. 128315, 29 June 1999) which categorically pronounced that an assessment shall contain not only a computation of tax liabilities, but also a demand for payment within a prescribed period. The *Pascor* case also emphasized that the date certain for the payment of tax liabilities is indispensable in an assessment as it dictates the time when the penalties, surcharges and interest shall begin to accrue.

Considering that the assessment fixes and determines the liability of the taxpayer and is deemed as a notice and demand for the payment thereof, it is axiomatic that the date within which to tack its payment must be shown clearly in the assessment.

In my several years of professional practice in the realm of corporate tax, seeing undated assessment notices is not uncommon. With this case, I hope that the tax authorities will be more mindful about the importance of indicating the date in its formal demands to avoid loss of potential tax collections due to such technicalities.

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