Atty. Francis Kayvin B. Escobar

TAX LAW FOR BUSINESS

BDB Law's "Tax Law for Business" *appears in the opinion section of* ***Business Mirror*** *every Thursday.*

The mutually exclusive nature of the remedies against assessment

In every assessment made by the Bureau of Internal Revenue (BIR), the taxpayer is afforded with ample of remedies in disputing the same, as part of the right to due process. In this regard, our National Internal Revenue Code provides for both administrative and judicial remedies in contesting assessments of national taxes against taxpayers.

Our present Tax Code entitles the taxpayer to reply to a Preliminary Assessment Notice within a prescribed period, which, based on implementing rules, is 15 days from the receipt of such PAN. If the BIR is not satisfied with the arguments in the Reply to the PAN, a Final Assessment Notice (FAN) or Formal Letter of Demand may be issued. The taxpayer needs to file a protest letter within 30 days from receipt for the assessment not to become final and executory. If the BIR is still left unsatisfied with the defenses interposed by the taxpayer, the inevitable result is that a Final Decision on Disputed Assessment will be issued and serves as the denial of the protest filed by the taxpayer.

After the exhaustion of remedies in the administrative level, the judicial machinery starts to grind. At that stage, the taxpayer whose protest to a FAN is denied or is not acted upon by the BIR may be prompted to elevate the case to the Court of Tax Appeals (CTA).

Based on the last paragraph of Section 228 of the Tax Code, if the protest is denied in whole or in part, or is not acted upon within 180 days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the CTA within 30 days from the

receipt of the decision or from the lapse of the 180-day period. Otherwise, the decision shall become final, executory and demandable. The question is—in case of inaction by the BIR, and the 30-day period already prescribed after the lapse of the 180-day period, can the CTA still take cognizance of a Petition for Review filed before it?

As early as April 2007 the Supreme Court in GR 168498 ruled in the affirmative stating that in case the Commissioner fails to act on a disputed assessment within the 180-day period from date of submission of documents, a taxpayer can either: (1) file a petition for review with the CTA within 30 days after the expiration of the 180-day period; or (2) await the final decision of the Commissioner on the disputed assessments and appeal such final decision to the CTA within 30 days after receipt of a copy of such decision. The Court further explained that, should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the 180-day period, the taxpayer may still appeal to the Court, but only upon receipt of such final decision.

In the more recent case in GR 171251 where the issue raised before the Supreme Court was whether or not the CTA may still acquire jurisdiction over a disputed assessment case where the 30-day period after the lapse of the 180-day period has expired, the High Court was eloquent in ruling that the two remedies under Section 228 granted to the taxpayer in a disputed assessment case are mutually exclusive, such that the resort to one bars the application of the other. The decision reiterates the doctrine in GR 168498 in ruling that if the 30-day period lapsed under the first remedy, the taxpayer is deemed to have chosen the second remedy, that is, to await for the denial by the BIR of the protest and to elevate the same to CTA upon such denial. This means that the taxpayer may still elevate the case to the CTA within 30 days from the receipt of the denial by the CIR of the protest despite the expiration of 30 days from the lapse of the 180-day period under the first remedy, since the taxpayer opted the second remedy.

It must be noted, however, that the application of this doctrine laid down by the two mentioned cases applies only to a disputed assessment. In CTA case 8847, the Honorable Court had the occasion to rule that the doctrine laid down in the said cases does not apply in a refund of unused input value-added tax. The issue in the said CTA case involves the interpretation of rules on input VAT refund and not an issue touching on disputed assessment.

****

The author is a junior associate of Du-Baladad and Associates Law Offices (BDB Law), a member-firm of WTS Global.