

# Tax bulletin

October 2015



# Highlights

## BIR Rulings

- ▶ In a principal-agent arrangement where the agent procures goods and services on behalf of the principal, it is still the principal who is the income-payor, and as such, is liable to withhold taxes on the payments to suppliers. Although the principal and agent may enter into an agreement whereby the agent shall withhold and remit to the BIR the taxes due on the purchases, the liability still falls on the principal in case of failure to withhold. **(Page 3)**
- ▶ Unless otherwise provided by law, a government instrumentality is subject to tax pursuant to Section 27(C) of the Tax Code. **(Page 3)**

## BIR Issuances

- ▶ Revenue Regulations (RR) No. 11-2015 further amends Sections 2 and 7(6) of RR No. 7-2010, which implements RA No. 9994, otherwise known as the Expanded Senior Citizens Act of 2010. **(Page 4)**
- ▶ RR No. 13-2015 further amends Section 2.57.2 of RR No. 2-98, imposing a withholding tax on purchases of sugar by proprietors or operators of sugar mills/refineries on their mill share. **(Page 5)**
- ▶ Revenue Memorandum Circular (RMC) No. 64-2015 reiterates the information required to be reflected on receipts/invoices/other commercial invoices generated from Cash Register Machines (CRM)/Point-of-Sale (POS)/other similar machines/software. **(Page 6)**

## BOC Issuances

- ▶ Customs Memorandum Order (CMO) No. 35-2015 prescribes the revised rules for the electronic/manual issuance and lifting of alert orders at all ports of entry. **(Page 6)**
- ▶ CMO No. 37-2015 prescribes additional guidelines and revisions to CMO No. 32-2015, for the Establishment, Supervision and Control of off-dock Container Yards and/or Container Freight Stations (OCC) and other off-dock Customs Facilities outside the Customs Zone (CFS-OCZ). **(Page 8)**

## BSP Issuances

- ▶ Circular No. 887 further amends the regulations on the approval/confirmation of the election/appointment of directors/officers. **(Page 9)**
- ▶ Circular No. 888 amends the regulations on dividend declaration and interest payments on Tier 1 capital instruments. **(Page 10)**

## Court Decisions

- ▶ To be valid, a Formal Letter of Demand sent to the taxpayer must indicate an assessment notice, which is a "notice to the effect that the amount therein stated is due as tax and a demand for payment thereof." **(Page 10)**

- ▶ If it is shown that expenses have been incurred but the exact amount thereof cannot be ascertained due to the absence of supporting documents, it is the duty of the BIR to make an estimate of the allowable deduction to determine the taxpayer's taxable income.

The Preliminary Assessment Notice (PAN) is not indispensable, unlike the protest against the Final Assessment Notice (FAN), and the fact of non-protest shall not make the assessment final and unappealable. **(Page 11)**

## **BIR Rulings**

### **BIR Ruling No. 294-15 dated September 7, 2015**

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In a principal-agent arrangement where the agent procures goods and services on behalf of the principal, it is still the principal who is the income-payor, and as such, is liable to withhold taxes on the payments to suppliers. Although the principal and agent may enter into an agreement whereby the agent shall withhold and remit to the BIR the taxes due on the purchases, the liability still falls on the principal in case of failure to withhold.

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#### **Facts:**

The Department of Agrarian Reform (DAR) and the Procurement Service - Department of Budget and Management (PS-DBM) entered into a Memorandum of Agreement (MOA) whereby DAR engaged PS-DBM to procure, on its behalf, equipment and common service facilities to be distributed to agrarian reform organizations.

#### **Issue:**

Is the DAR required to withhold taxes on the payments made by PS-DBM to the sellers of the equipment and common service facilities?

#### **Ruling:**

Yes. In the principal-agent arrangement between DAR and PS-DBM, DAR as the principal is still the income-payor. Hence, DAR is constituted as the government's withholding agent, obliged to deduct and withhold the appropriate taxes due on its purchases of goods and services. Although DAR and PS-DBM may enter into an agreement whereby PS-DBM shall withhold and remit to the BIR the taxes due on the purchases made on behalf of DAR, the liability still falls on the DAR as the principal in case of failure to withhold.

### **BIR Ruling No. 313-15 dated September 15, 2015**

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Unless otherwise provided by law, a government instrumentality is subject to tax pursuant to Section 27(C) of the Tax Code.

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#### **Facts:**

The Subic Bay Metropolitan Authority (SBMA) was established as the operating and implementing arm of the Bases Conversion and Development Authority under Republic Act (RA) No. 7227. The SBMA is tasked to undertake and regulate the establishment, operation and maintenance of utilities, other services, and infrastructure in the Subic Special Economic Zone (SEZ). Under RA No. 7227, as amended, all business enterprises within the Subic SEZ are subject to a 5% tax on gross income earned in lieu of all national and local taxes.

#### **Issues:**

1. Is the SBMA exempt from all national and local taxes, including the 5% tax on gross income imposed on business enterprises within the Subic SEZ?
2. Is the income derived from the exercise of SBMA's governmental functions excluded from the computation of SBMA's gross income and exempt from tax?

**Ruling:**

1. No. There is no specific provision in RA No. 7227, as amended, which exempts the SBMA from all national and local taxes. The SBMA is likewise not exempt from the 5% preferential tax on gross income earned imposed on enterprises within the Subic SEZ since there is no express grant of such exemption by any law.

On the contrary, government instrumentalities such as the SBMA are subject to tax on their taxable income pursuant to Section 27(C) of the Tax Code.

2. No. Section 32(B)(7)(b) of the Tax Code excludes from gross income and exempts from taxation, income derived by the government or its political subdivisions from any public utility or from the exercise of any essential governmental functions. However, this exemption does not apply to a government instrumentality such as the SBMA.

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**BIR Issuances**

RR No. 11-2015 further amends Sections 2 and 7(6) of RR No. 7-2010, which implements RA No. 9994, otherwise known as the Expanded Senior Citizens Act of 2010.

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**Revenue Regulations No. 11-2015 dated September 29, 2015**

- ▶ Section 2 of RR No. 7-2010 is amended to read as follows:

“Definitions - For purposes of these Regulations, the following terms and phrases shall be defined as follows:

x x x

- n. Identification Document - any document or proof of being a senior citizen, which may be used for the availment of benefits and privileges under these Rules. It shall be any of the following:
  - i. Senior Citizens' Identification Card issued by the Office of Senior Citizens Affairs (OSCA) in the city or municipality where the elderly resides;
  - ii. The Philippine passport of the elderly person or senior citizen concerned; and
  - iii. Government-issued identification card which reflects on its face the name, picture, date of birth and nationality of the senior citizen which includes any of the following:
    - 1) Digitized Social Security System ID
    - 2) Government Service Insurance System ID
    - 3) Professional Regulation Commission ID
    - 4) Integrated Bar of the Philippines ID
    - 5) Unified Multi-Purpose ID (UMID)
    - 6) Driver's License”

- ▶ Section 7(6) of RR No. 07-2010 is hereby further amended to read as follows:

“Tax Treatment of the Discount Granted to Senior Citizens. –

xxx The claim of the discount granted under the Act as an additional item of deduction from the gross income of the seller is subject to the following conditions:

x x x

6. The business establishment giving sales discounts to qualified Senior Citizens is required to keep a separate and accurate record of sales, which shall include the name of the Senior Citizen, Identification Document, gross sales/receipts, sales discount granted, dates of transactions and invoice numbers for every sale transaction to Senior Citizen.”

- ▶ These Regulations shall take effect after 15 days following publication in leading newspaper of general circulation.

*(Editor’s Note: RR No. 11-2015 was published in the Manila Bulletin on October 1, 2015.)*

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RR No. 13-2015 further amends Section 2.57.2 of RR No. 2-98, imposing a withholding tax on purchases of sugar by proprietors or operators of sugar mills/refineries on their mill share.

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#### **Revenue Regulations No. 13-2015 dated October 29, 2015**

- ▶ Section 2.57.2 of RR No. 2-98, as amended, is further amended to read as follows:

“(AA) Income payments on sugar - On gross payments on purchases of sugar- One percent (1%)

1. Proprietors or operators of sugar mills/refineries on their mill share, xxx:

- 1.1. For locally produced raw cane sugar and raw sugar- the composite price, in metric tons, governing the specified crop year of raw cane sugar and raw sugar as reflected in one of the reports (Annex “A”) under the weekly Final Sugar Production Bulletin duly issued by the Sugar Regulatory Administration (SRA) on the date of sale, or actual selling price, whichever is higher.

It shall be ensured that a copy of the weekly Final Sugar Production Bulletin be officially transmitted by the SRA to the Commissioner of Internal Revenue within 24 hours from the date of issuance thereof.

x x x”

- ▶ These Regulations shall take effect after 15 days following publication in a newspaper of general circulation.

*(Editor’s Note: RR No. 13-2015 was published in the Manila Bulletin on October 30, 2015.)*

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RMC No. 64-2015 reiterates the information required to be reflected on receipts/invoices/other commercial invoices generated from CRM/POS/other similar machines/software.

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### **Revenue Memorandum Circular No. 64-2015 dated October 2, 2015**

- ▶ The following information of the purchaser, customer or client must be indicated on the VAT receipts/invoices for sales made to a VAT-registered person amounting to Php 1,000.00 or more:
  1. Name of purchaser, customer or client;
  2. Address;
  3. Taxpayer Identification Number (TIN); and
  4. Business style, if any.
- ▶ If the CRM/POS is not capable of showing the above requirements, manually pre-printed receipts/invoices with approved Authority to Print (ATP) must be issued to the purchaser, customer or client.
- ▶ Receipts/invoices generated by CRM/POS/other similar machines/software should reflect the foregoing information, in order to support a valid claim for input tax credit by a VAT-registered taxpayer.
- ▶ Failure to comply with this Circular may result in the imposition of the corresponding penalties prescribed under Revenue Memorandum Order (RMO) No. 7-2015 and other existing issuances.

### **BOC Issuances**

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CMO No. 35-2015 prescribes the revised rules for the electronic/manual issuance and lifting of alert orders at all ports of entry.

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### **Customs Memorandum Order No. 35-2015 dated September 23, 2015**

#### ▶ **General Provisions**

1. An Alert Order (AO) is issued to enjoin all concerned customs personnel to be cautious and thorough in the examination of the alerted shipment and its accompanying import documents in order to verify derogatory information or suspected violation.
2. The BOC Commissioner, Deputy Commissioners (Intelligence Group, Enforcement Group, Assessment and Operations Coordinating Group) and all District Collectors are authorized to issue AOs.
3. The authority to lift AOs shall only be exercised by the District Collector concerned, by authority of the Commissioner. The Commissioner may *motu proprio* lift AOs issued by other alerting officers.
4. Only the Office of the Commissioner can issue AOs for shipments under the Super Green Lane (SGL) and request for issuance of AO from other government agencies.
5. Subject to written approval by the Commissioner, the Deputy Commissioners shall, in their absence, authorize or delegate the power to issue AOs to Service Directors under their respective groups, and the District Collector to any of his Deputy Collectors.
6. Shipment/s can only be held through a validly issued AO. Any request to hold in abeyance the entry processing of a shipment, by an official/employee, in any form is prohibited. Any official, employee or person who aides in detaining a shipment in any manner not compliant with this CMO shall be subject to administrative and criminal actions.

7. Manual AOs may only be issued under any of the following circumstances:
  - ▶ The e2m system is not accessible;
  - ▶ For unmanifested cargoes;
  - ▶ For entries processed under informal entry; and
  - ▶ For export cargoes.
8. No AO shall be issued against shipments which have already been tagged in the On-Line Release System (OLRS).The alerting officer who finds reasonable grounds to hold a shipment already tagged in OLRS shall make a recommendation to the Office of the Commissioner for issuance of a "special stop."
9. Once an AO is issued, the shipment or any part of it shall not be released until 100% physical examination has been conducted and the Commissioner or the concerned District Collector, as authorized by the Commissioner, has ordered its release.
10. A shipment or any part thereof already alerted and examined in accordance with this CMO shall not be subjected to another alert or examination. Only the Commissioner of Customs can have a shipment re-examined.
11. The Office of the Commissioner shall have direct access to the e2m Alert System for monitoring all electronically issued AOs.

▶ **Procedure for Issuance of AOs**

1. In case of an Electronic Alert, the Alerting Officer shall first issue the AO in the e2m Alert System in the prescribed Alert Order form in quadruplicate.
2. In case of Manual Alert, the Alerting Officer shall submit, within 24 hours from issuance, the accomplished quadruplicate copies of the AO to the Office of the Commissioner and shall send copies through electronic mail.

▶ **Procedure for the Implementation of AOs**

1. The Alerting Officer shall, within the same day that of the AO is issued disseminate/distribute the same through personal service, electronic mail or facsimile to the following:
  - ▶ District Collector where the alerted shipment is located;
  - ▶ Customs Wharfinger;
  - ▶ Customs Gatekeeper;
  - ▶ Arrastre Operator or its equivalent;
  - ▶ Consignee, broker or their authorized representative.

In case the mentioned modes of service are not available, the AO shall be posted at the port's bulletin board or any conspicuous place within the port of discharge for three consecutive days. After the lapse of the three-day period and the consignee/broker/authorized representative fails to coordinate with the Alerting Officer, the latter may cause the examination of the alerted shipment.

2. The District Collector shall, within 24 hours from receipt of the AO, assign a Customs examiner who shall perform the following functions:
  - ▶ Determine if the shipment has been released from Customs, or transferred to another Customs Bonded Warehouse (CBW), or if the shipment has been examined prior to the issuance of the AO;
  - ▶ Conduct a 100% examination of the alerted shipment/s within seven days from the issuance of the AO. Once commenced, the conduct of the AO must be done continuously, until completion thereof.
  - ▶ Within 24 hours from completion of the examination, submit a duly accomplished AO Report Form to the District Collector, Alerting Office and Office of the Commissioner.
3. The AO shall designate a representative who shall witness the conduct of the 100% examination of the alerted shipment.
4. Physical examination of the alerted shipment shall be under the direct supervision and control of the District Collector concerned.

▶ **Disposition of Alerted Shipments**

1. The District Collector shall, within 24 hours from receipt of AO Report Form, make a Final Disposition of the AO. Depending on his evaluation and review, he may:
  - ▶ Recommend the lifting of the AO;
  - ▶ Recommend the payment of additional duties and taxes; or
  - ▶ Recommend the entire/partial seizure of the shipment.
2. In case of disapproval by the District Collector of the recommendation of the examiner, he shall refer the report for comment or further review to the Import Assessment Service (IAS) on issues concerning rules of origin, valuation and classification of goods.
3. Any undue delay in the disposition of the AO shall be a ground for administrative and/or criminal action against the officer or personnel causing the delay.

▶ **Reportorial Requirement**

A weekly status Report on all alert orders issued shall be submitted to the Office of the Commissioner.

▶ **Repealing Clause**

The provisions of CMO Nos. 92-91, 104-92, 8-93, 4-94, 21-2014, and 24-2014, pertaining to the issuance and lifting of AOs are repealed.

- ▶ CMO No.35- 2015 takes effect immediately.

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CMO No. 37-2015 prescribes additional guidelines and revisions to CMO No. 32-2015, for the Establishment, Supervision and Control of off-dock Container Yards and/or Container Freight Stations (OCC) and other off-dock CFS-OCZ.

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**Customs Memorandum Order No. 37-2015 dated October 23, 2015**

- ▶ All new applications to operate as an OCC under CMO No. 32-2015 shall, as applicable, comply with the conditions provided under CAO No, 5-1996 titled "Rules on the approval of Application to Operate as Off-Dock Container Yards "(CY")/CFS."



- ▶ All existing CY/CFS-OSZ shall submit their application for renewal of license to operate and for the Issuance of the Certificate of Authority to operate pursuant CMO No. 32-2015, directly with the Office of the Deputy Commissioner, AOCG, through the Director, Port Operation Service (POS), and shall pay the annual supervision fees on or before October 31, 2015.
- ▶ The Certificate of Authority to operate as an OCC issued to existing CY/CFS-OSZ shall be for a period of 5 years. Renewal for accreditation as OCC of all existing CY/CFS-OSZ shall be deemed automatic, in the absence of any violation under CMO No. 32-2015.
- ▶ CMO No. 27-2015 takes effect immediately.

## **BSP Issuances**

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Circular No. 887 further amends the regulations on the approval/confirmation of the election/appointment of directors/officers.

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### **BSP Circular No. 887 dated October 7, 2015**

- ▶ The following sections and subsections of the Manual of Regulations for Banks (MORB) are amended: Subsection X141.2 on the minimum qualifications of a Director; Subsection X141.4 on confirmation of the election/appointment of directors/officers; Subsection X141.9 on certifications required; Subsection X142.2 on the minimum qualifications of an officer; and Subsection X144 on bio-data of directors and officers.
- ▶ An elected director has the burden to prove that he/she possesses all the minimum qualifications and none of the disqualifications by submitting the documentary requirements listed in Appendix 98. Non-submission of complete documentary requirements within the prescribed period shall be construed as his/her failure to establish his/her qualifications for the position and result in his/her removal from the Board.

The members of the board of directors shall possess the foregoing qualifications for directors in addition to those required or prescribed under RA No. 8791 and other existing applicable laws and regulations.

- ▶ The following sections and subsections of the Manual Regulations for Non-Bank Financial Institutions (MORNBFI) are also amended: Section 6, Subsection 4141Q.2 on the minimum qualifications of a director; Section 7, Subsection 4141Q.4 on the confirmation of the election/appointment of directors/officers; Section 8, Subsection 4141Q.9 on reports required; Section 9, Subsection 4142Q on the definition and qualifications of officers; Section 10, Subsection 4144Q on Monetary Board confirmation of directors and senior officers; Section 11, Subsection 4145N on bio-data of directors and officers; Section 12, Subsection 4147S on bio-data of trustees and officers and Section 13.
- ▶ This circular shall take effect 15 calendar days following its publication either in the Official Gazette or in a newspaper of general circulation.

*[Editor's Note: Circular No. 887 was published in The Standard on October 14, 2015.]*

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Circular No. 888 amends the regulations on dividend declaration and interest payments on Tier 1 capital instruments.

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### **BSP Circular No. 888 dated October 9, 2015**

- ▶ Section X136 of the MORB and Section 4136Q of the MORNBF1 on Dividends are amended.
- ▶ The rules and regulations under Section X136 of the MORB shall govern the declaration of dividends on shares of stock, regardless of feature, as well as interest payments on unsecured subordinated debt which meets the qualification requirements of Additional Tier 1 or Hybrid Tier 1 capital as defined under existing risk-based capital adequacy framework.
- ▶ The rules and regulations under Section 4136Q of MORNBF1 shall govern the declaration of dividends on shares of stock, regardless of feature, as well as interest payments on unsecured subordinated debt which meets the qualification requirements of Additional Tier 1 as defined under existing risk-based capital adequacy frameworks.
- ▶ The Financial Reporting Package of the MORB, prescribed under Subsection X191.2 of the MORB, is further amended to revise the Manual of Accounts (MOA) to amend the definition of Dividends Payable as follows:
  1. Dividends payable - This refers to the amount of unpaid cash dividends declared by the Board of Directors to stockholders of record.
- ▶ Appendix 6 of the MORB and Appendix Q-3 of the MORNBF1 are amended to include the Report on Dividends Declared (for banks and QBs) as a Category A-1 report which shall be submitted within 10 banking/business days after date of dividend declaration to the appropriate department of the SES.
- ▶ This circular shall take effect 15 calendar days following its publication either in the Official Gazette or in a newspaper of general circulation.

*[Editor's Note: Circular No. 888 was published in The Manila Times on October 16, 2015.]*

## **Court Decisions**

### **Derek Arthur P. Ramsay vs. Commissioner of Internal Revenue**

CTA (Third Division) Case 8456 promulgated September 17, 2015

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To be valid, a Formal Letter of Demand sent to the taxpayer must indicate an assessment notice, which is a "notice to the effect that the amount therein stated is due as tax and a demand for payment thereof."

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#### **Facts:**

On August 10, 2011, Respondent Commissioner of Internal Revenue (CIR) issued a Preliminary Assessment Notice (PAN) on Petitioner Derek Arthur P. Ramsay (Ramsay) for alleged deficiency income tax and VAT covering taxable years 2006 to 2009. Ramsay protested the PAN arguing that he did not receive any Letter of Authority and that he filed tax returns for the covered years in October 2010, wherein he paid the corresponding penalties for late filing.

On January 4, 2012, the BIR issued the Formal Letter of Demand (FLD). On February 20, 2012, the BIR issued a Final Demand Letter demanding payment of the assessed deficiency taxes. On February 21, 2012, Ramsay protested the FLD arguing that since no notice of assessment was issued, the FLD was illegal. He argued that he was denied due process when the BIR only sent the FLD with details of discrepancy.

On February 27, 2012, the BIR wrote to Ramsay alleging that the assessment had become final and executory for failure to file a protest within 30 days from the receipt of the FLD. On April 11, 2012, Ramsay filed the Petition for Review with the CTA.

**Issue:**

Is the assessment valid?

**Ruling:**

No. An FLD without the corresponding Assessment Notice cannot be validly enforced on a taxpayer. Section 228 of the Tax Code provides that the taxpayer shall be informed in writing of the law and the facts on which the assessment is made. Otherwise, the assessment is void.

It is a requirement of due process that not only the FLD be sent to the taxpayer, but it must indicate an assessment notice, which is a "notice to the effect that the amount therein stated is due as tax and a demand for payment thereof."

In the case of Ramsay, what was stated in the FLD were: (1) The computation and tabulations of the alleged deficiency taxes due, together with interest, surcharge, penalty, and their respective basis; (2) a request to pay the deficiency taxes through the duly authorized agent bank; and (3) a note that the interest and the total amount due shall be adjusted if paid beyond February 8, 2012.

These statements do not amount to an assessment notice as there was no mention of a definite time when payment was due and demandable.

Quoting the Supreme Court case of *CIR vs. Metro Star Superama, Inc.* promulgated on December 8, 2010, the CTA ruled that due process is satisfied if the Final Assessment Notice (FAN), stating the computation of tax liabilities and a demand to pay within the prescribed period, was sent to the taxpayer.

In Ramsay's case, since neither the FLD nor the attached details of discrepancies contained a demand to pay within a specified period of time, its issuance did not amount to a FAN. These are void for failure to comply with Section 228 and Section 3 of RR No. 12-99.

**Next Mobile, Inc. vs. Commissioner of Internal Revenue**

CTA (Third Division) Case 8516 promulgated October 14, 2015

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If it is shown that expenses have been incurred but the exact amount thereof cannot be ascertained due to the absence of supporting documents, it is the duty of the BIR to make an estimate of the allowable deduction to determine the taxpayer's taxable income.

The PAN is not indispensable, unlike the protest against the FAN, and the fact of non-protest shall not make the assessment final and unappealable.

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**Facts:**

Respondent CIR assessed petitioner Next Mobile, Inc. for alleged deficiency income tax covering taxable year 2006. On April 6, 2010, Next Mobile received the PAN and, before it could protest the PAN, received the FAN on April 15, 2010. The CIR disallowed 50% of Next Mobile's expenses for being unsubstantiated pursuant to RMC No. 23-2000.

On May 14, 2010, Next Mobile protested the FAN. Upon denial of its protest, Next Mobile filed a Petition for Review with the CTA, and argued that the FAN was issued in violation of its right to procedural process. Next Mobile also argued that the CIR erroneously applied the 50% rule, which states that if there is a showing that expenses have been incurred but the exact amount thereof cannot be ascertained due to absence of documentary evidence, the BIR can estimate the allowable deduction to compute the taxpayer's taxable income.

On the other hand, the CIR argued that the assessment has become final and executory as Next Mobile failed to submit documents to support the protest to the FAN. The CIR also maintained that Next Mobile was accorded due process and that the 50% rule which approximates allowable expense deduction is warranted under RMC No. 23-2000 based on the Best Evidence Obtainable.

### **Issues:**

1. Did the assessment become final and executory for failure to submit documents supporting the protest to the FAN?
2. Did the issuance of the FAN without allowing Next Mobile the opportunity to protest the PAN invalidate the assessment?
3. Is the BIR's assessment based on the 50% rule valid?

### **Ruling:**

1. No. Next Mobile may choose to submit the protest to the FAN with no supporting documents without invalidating its protest. The lack of documentation will only matter in the BIR's evaluation of the merits of the case, but should not result in the finality of the deficiency assessment. The term "relevant supporting documents" are those documents necessary to support the legal basis in disputing a tax assessment, as determined by the taxpayer. The BIR can only inform the taxpayer to submit additional documents but cannot demand what type of supporting documents should be submitted.
2. No. While it is true that the BIR did not wait for the lapse of the 15-day period before the issuance of the FAN, the requirements of procedural due process under RR No. 12-99 were substantially complied with. An informal conference had been set to give Next Mobile the opportunity to rebut the BIR's findings. Moreover, the PAN is not indispensable, unlike the protest against the FAN, and the fact of non-protest shall not make the assessment final and unappealable.
3. Yes. The CTA found the deductions claimed by Next Mobile, except for interest expense, were not adequately supported by documentary evidence, justifying the application of the 50% rule of approximation under RMC No. 23-2000.

*[Editor's Note: RR No. 12-99 has been amended by RR No. 18-2013. Also, in CTA En Banc Case No. 1139 promulgated August 11, 2015, the CTA En Banc ruled that there is violation of due process if the FAN is issued without giving the taxpayer the opportunity to protest the PAN.]*

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