



R.G. Manabat & Co.

You snooze, you lose: Sleeping on your rights may lead to estoppel

Atty. Rica Ysabelle L. Casiquin

Top of Mind
11 September 2018

The taxpayer must depend on the substance of the case against assessments, and not merely on technicalities such as the validity of waivers of the statute of limitations.

Basic is the rule that rights may be waived, unless the waiver is contrary to law, public order, public policy, morals, or good customs, or prejudicial to a third person with a right recognized by law. This concept of waiver apply to tax audit investigations – those conducted by the Bureau of Internal Revenue (“BIR”) against taxpayers – as well.

Section 203 of the National Internal Revenue Code of 1997, as amended (“NIRC”) provides that the BIR may conduct assessment within three (3) years from the last day prescribed by law for the filing of the tax return or from the day the return was filed, whichever is later. However, in case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed by the BIR, at any time within ten (10) years after the discovery of the falsity, fraud or omission. After the lapse of this reglementary period, the BIR’s right to assess the taxpayer is deemed to have prescribed, unless the taxpayer executes a valid waiver of the statute of limitations prior to the prescriptive period.

Having a prescriptive period to conduct assessment is beneficial both to the Government and to taxpayers. It is beneficial to the Government since tax officers are prescribed to promptly assess delinquent taxpayers; and equally beneficial to taxpayers since it secures them against unscrupulous tax agents, who without the protection of this prescriptive period, would have every opportunity to take advantage of diligent taxpayers.

In Revenue Memorandum Order No. 20-90 (“RMO No. 20-90”), the BIR has seen fit to provide the procedure behind a valid Waiver of the Statute of Limitations. RMO No. 20-90 mandates that a waiver must indicate the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription. The taxpayer himself or his duly authorized representative must sign the waiver. In the case of a corporation, the waiver must be signed by any of its accountable officials. In case the taxpayer delegates this authority to a representative, such delegation should be in writing and duly notarized. The CIR or the revenue official authorized by him must sign the waiver indicating that the BIR has accepted and agreed to the waiver. The date of such acceptance by the Bureau should be indicated. Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed. The waiver must be signed by the authorized revenue officials. The waiver must be notarized and executed in three copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the office accepting the waiver. The fact of receipt by the taxpayer must be indicated in the original copy to show that the taxpayer was notified of the acceptance of the BIR and the perfection of the agreement.

In the recent case of CIR vs. Transitions Optical Philippines, Inc. (G.R. No. 227544, February 12, 2018), the Supreme Court reiterated that a waiver must strictly comply with the requirements prescribed by the regulations. However it qualified and held that a taxpayer cannot impugn the validity of the waiver on the basis of the defects he himself has caused after benefiting from it, as he will be deemed estopped by his bad faith. In this case, two (2) waivers were executed by the parties extending the prescriptive periods for assessment. These waivers were not accompanied by a notarized written authority to act on behalf of the respondent. Likewise, neither the Revenue District Office's acceptance date nor respondent's receipt of the BIR's acceptance was indicated in either of the waiver. Despite the waiver's non-compliance with the requirements in the regulations, the Supreme Court ruled in favor of the BIR and treated the waiver as valid and binding upon the taxpayer since the defect was attributable to the latter's deliberate acts. The respondent did not raise as an issue the validity of the waiver and the prescription of the petitioner's right to access the deficiency taxes. By principle of estoppel, respondent should not be allowed to question the validity of the waivers. Nonetheless, even as respondent is estopped from questioning the validity of the waivers, the court held that assessment is still void since the Final Assessment Notice (FAN) was served beyond the supposed extended period. Counting of three (3) year prescription period begins from the receipt of the FAN.

The validity of the executed waiver must be raised at the earliest possible time. Failure to raise the issue of validity may be considered as sleeping on the taxpayer's rights hence may lead to estoppel. By the principle of estoppel, taxpayer should not be allowed to question the validity of the waivers if and when he failed to question the validity on the earliest possible time, such failure may be construed as rights being waived.

A waiver of the statute of limitations is considered as derogation of the taxpayers' right to security against prolonged and unscrupulous investigation and must therefore be carefully and strictly construed. At the end of the day, however, the taxpayer must depend on the substance of the case against assessments, and not merely on technicalities such as the validity of waivers of the statute of limitations.

Atty. Rica Ysabelle L. Casiquin is a Supervisor from the Tax Group of KPMG R.G. Manabat & Co. (KPMG RGM&Co.), the Philippine member firm of KPMG International. KPMG RGM&Co. has been recognized as a Tier 1 tax practice, Tier 1 transfer pricing practice, Tier 1 leading tax transactional firm and the 2016 National Transfer Pricing Firm of the Year in the Philippines by the International Tax Review.

This article is for general information purposes only and should not be considered as professional advice to a specific issue or entity.

The views and opinions expressed herein are those of the author and do not necessarily represent the views and opinions of KPMG International or KPMG RGM&Co. For comments or inquiries, please email ph-inquiry@kpmg.com or rgmanabat@kpmg.com.