INCOME TAX

1. INCOME TAX

   - Tax on all yearly profits arising from property, professions, trades or offices, or as a tax on a person's income, emoluments, profits and the like *(Fisher v. Trinidad)*.
   - Income tax is a direct tax on actual or presumed income (gross or net) of a taxpayer received, accrued or realized during the taxable year.

2. WITHHOLDING TAX

   - It is not an internal revenue tax but a mode of collecting income tax in advance on income of the recipient of income thru the payor of income. [NOTE: Sec. 21, NIRC enumerates various internal revenue taxes.]
   - There are 2 types of withholding taxes, namely: (1) final withholding tax; and (2) creditable withholding tax.

3. FINAL WITHHOLDING INCOME TAX

   - FWT withheld by the payor of income (e.g., 20% FWT on interest income on bank deposits) represents FULL payment of income tax due on such income of the recipient.
   - Income payee (or recipient of income) does not report income subjected to FWT in his income tax return, although income is reflected in his audited financial statements for the year. However, he is not allowed to claim any tax credit on income subjected to FWT.
   - Withholding agent files the withholding tax return, which includes the FWT deducted from the income payee, and pays the tax to the BIR. There is no Certificate of Tax Withheld issued to income payee.
   - No Certificate of Tax Withheld (BIR Form 2307) is attached to the income tax return of recipient of income because he does not claim any tax credit in his tax return.

INCOME TAX SYSTEMS

1. **GLOBAL TAX SYSTEM**

   - Compensation income <u>not</u> subject to FWT
   - Business and/or professional income
   - Capital gains <u>not</u> subject to FWT
   - Passive investment income <u>not</u> subject to FWT
   - Other income <u>not</u> subject to FWT

2. **SCHEDULAR TAX SYSTEM**

   - Compensation income subject to FWT (salary of OBU expat)
   - Capital gains subject to FWT (real property in the Phil and shares of domestic corporation)
   - Passive investment income subject to FWT (interest on bank deposit)
   - Other income subject to FWT (auto won on X'mas raffle)

3. The Philippines adopted the semi-global or semi-schedular tax system. Either the global or schedular system, or both systems may apply to a taxpayer.

FORMULA

GLOBAL SYSTEM

Gross sales/revenue
Less: Cost of sales/service
Gross income
Less: Deductions
PAE (for individual)
Net taxable income
Multiplied by applicable rate (graduated or flat)
Income tax due
Less: Creditable WT
Balance

SCHEDULAR SYSTEM

Gross selling price or fair market value, whichever is higher times applicable tax rate = Tax due (real property)
Gross selling price less cost or adjusted basis = Capital gain times applicable tax rate = Tax due (shares of dom corp)
Gross income times applicable rate = Tax due (passive inv income)

NATURE OF ASSET

1. ORDINARY ASSET
   - Inventory if on hand at end of taxable year
   - Stock in trade held primarily for sale or for lease in the course of trade or business
   - Asset used in trade or business, subject to depreciation
   - Real property used in trade or business
2. CAPITAL ASSET
   - All other assets, whether or not used in trade or business, other than the above assets

KINDS OF TAXPAYERS

1. INDIVIDUAL
   a. CITIZEN
      - Resident – **Taxable on worldwide income**
      - Non-resident – Taxable on income from sources within the Phil
        - Immigrant or permanent worker – NRC from date of departure from the Phil
        - OFW (seamen) – NRC if his aggregate stay outside the Phil is more than 183 days

   b. ALIEN – Taxable on income from sources within the Phil
      - Resident
      - Non-resident
        - Engaged in trade or business (more than 180 days in the Phil)
        - Not engaged in trade or business (180 days or less stay in Phil)
2. CORPORATION
   a. DOMESTIC – Taxable on worldwide income

b. FOREIGN – Taxable on income from sources within the Phil

- Resident (e.g., Phil branch of foreign corporation)
- Non-resident

c. TEST FOR TAX PURPOSES: Law of incorporation

PARTNERSHIPS

TAXABLE

- Partnerships, no matter how created or organized, including joint ventures or consortiums
- EXEMPT
- General professional partnership (GPP), but partners are taxed on their share of partnership profits actually or constructively paid during the year
- Joint venture or consortium undertaking construction activity or energy-related activities with operating contract with the government

RESIDENT FOREIGN CORPS

1. TAXABLE

- Ordinary branch of a foreign corporation in the Phil (30% of net taxable income from sources within the Phil)
  PEZA- & SBMA-registered branch are exempt from branch profit remittance tax
- Regional operating headquarters (ROHQ) – 10% of net taxable income from sources within the Phil
- Offshore banking unit (OBU) and foreign currency deposit unit (FCDU) [ING Bank Manila v. CIR] – 10% on gross interest income on foreign currency loans
- International carriers by air or water – 2.5% of Gross Phil Billings
- Foreign contractor or sub-contractor engaged in petroleum operations in the Phil – 8% of gross income

2. EXEMPT

- Representative office
- Regional headquarters (RHQ)

SOURCES OF INCOME

1. **Interest** – Interest from sources within Phil and interest on bonds and obligations of residents, corporate or otherwise
2. **Dividend** – From domestic corporation and from foreign corporation, unless less than 50% of gross income of foreign corporation for 3 years prior to declaration of dividends was derived from sources within the Phil; hence, apply only ratio of Phil-source income to gross income from all sources

3. **Services** – Place where services are performed, except in case of international air carrier and shipping lines which are taxed at 2.5% on their Gross Phil Billings. Revenues from trips originating from the Phil are considered as income from sources within the Philippines, while revenues from inbound trips are treated as income from sources outside the Philippines.

4. **Rentals and royalties** – Location or use of property or property right in Phil

5. **Sale of real property** – Located in the Philippines

6. **Sale of personal property** – Located in the Philippines

7. **Gain from sale of shares of stocks of a domestic corporation** is ALWAYS treated as income from sources within the Philippines.

8. **Other intangible property** – *Mobilia sequuntur personam – it follows domicile of owner*

GROSS INCOME

SALE OF GOODS

Gross Sales
Less: Cost of Sales:
Beg. Inventory
+ Purchases
Total available for sale
- Ending inventory
Cost of Sales
Gross income
Times 2%
MCIT

NOTE: MCIT is now computed on quarterly basis. If quarterly MCIT > than RCIT, excess MCIT of prior year is not allowed.

SALE OF SERVICES

Gross Revenue
Less: Cost of Service
consisting of all direct
costs and expenses
Gross income
Times 2%
MCIT

NOTE: MCIT is imposed beginning on the 4th taxable year immediately following the year in which the corp commenced bus operations *(Sec 27(E)(1), NIRC)*
Pay MCIT after 4 years immediately following the year bank commenced bus operations *(Manila Bank v CIR, GR 168118, Aug 28, 2006)*

INCOME

- INCOME means cash or its equivalent coming to a person within a specified period, whether as payment for services, interest or profit from investment. It covers gain derived from capital, from labor, or from both combined, including gain from sale or conversion of capital assets.
  - FBT is a tax on fringe benefits received by employees, although the tax is assumed by the employer-payor of income.
- Return of capital is exempt from income tax (e.g., tax-free exchange of property).
- To be taxable, there must be income, gain or profit; gain is received, accrued or realized during the year; and it is not exempt from income tax under the Constitution, treaty or law.
  - Mere increase in the value of property does not constitute taxable income. It is not yet realized during the year.
  - Transfer of appreciated property to the employee for services rendered is taxable income.

TEST IN DETERMINING INCOME

1. Realization test
   - There must be separation from capital of something of exchangeable value (e.g., sale of asset)
2. Claim of right doctrine
   - CIR v. Javier, 199 SCRA 824
3. Economic benefit test
   - Stock option given to the employee
   - Payment of real property that has appreciated in value by employer to its employee
4. Income from whatever source
   - All income not expressly exempted from income, irrespective of voluntary or involuntary action of taxpayer in producing income

NATURE OF INCOME

1. COMPENSATION INCOME
   - Existence of employer-employee relationship
2. BUSINESS AND/OR PROFESSIONAL INCOME
   - NO employer-employee relationship
3. CAPITAL GAIN
   - Real property in the Phil and shares of stock of domestic corporation
   - Other sources of capital gain
4. PASSIVE INVESTMENT INCOME
   - Interest, dividend, and royalty income
   - BIR cannot compute compounded interest on delay in payment of promissory notes in the absence of stipulation in contract *(CIR v. Isabela Cultural Corp, GR 172231, Feb 12, 2007).*
5. OTHER INCOME
   - Prizes and winnings
   - All other income, gain or profit not covered by the above classes

GROSS PHIL BILLINGS

A. GPB applies on revenue from transport of passengers, cargoes or mail originating from the Philippines
   - INTERNATIONAL AIR CARRIER

- From Phil to foreign destination
  - Continuous and uninterrupted flight
  - Transhipment of passenger in another country on another foreign airline: GPB tax applies only on aliquot portion of revenue on Philippine leg (Phil to foreign country)
- From foreign country to the Phil
  - This is treated as income from foreign sources; hence, exempt from Phil income tax

- INTERNATIONAL SHIPPING LINE
  - From Phil to final foreign destination is taxable
  - From foreign country to Phil is exempt

B. ORDINARY INCOME

- Demurrage fees (for late return of containers) are akin to rental income subject to ordinary corporate income tax rate based on net taxable income from sources within the Philippines

INTEREST INCOME

TYPES OF INTEREST INCOME

1. Subject to FWT: Interest income on bank deposits, deposit substitutes, trust and other similar arrangements
   - 20% FWT – peso deposit
   - 7.5% FWT – foreign currency deposit
2. NOT subject to FWT but subject to regular tax rates (5%-32%, if individual; 30%, if corporation): All other interest income or financing income
3. Exempt income:
   - Long-term deposit or investment by individuals
4. Taxable income:
   - Preferential tax rate – Pre-termination of long-term deposit by individual (20%: 1- less than 3 yrs; 12%: 3 yrs-less than 4 yrs; 5%: 4 yrs-less than 5 yrs); and interest on foreign loan
   - Regular tax rate (30%) – All other cases
5. DIVIDEND INCOME
   - REQUISITES FOR DIVIDEND DECLARATION
     - Presence of retained earnings
     - No prohibition to declare dividend in loan agreement
     - Declaration of dividend by Board of Directors

- TYPES OF DIVIDENDS
    a. Taxable
        - Cash dividend
        - Property dividend
    b. Exempt
        - Stock dividend (except when there is change in proportionate interest among stockholders and there is subsequent cancellation or redemption of shares declared as stock dividend)
        - Liquidating dividend – distribution of assets to stockholders

          Taxable on the part of stockholder under the global tax system

- Inter-corporate dividend: Exempt from tax
    – Corporation paying dividend: Domestic corporation
    – Recipient of dividend: Another domestic corporation or resident foreign corporation

- Dividend paid to non-resident foreign corporation
    – Corporation paying dividend: Domestic corporation
    – Recipient of dividend
        - Foreign head office makes direct investment in Phil company: 15% FWT
        - Phil branch of foreign corporation makes investment in Phil company: Exempt from income tax
    – Tax-sparing provision
        - If foreign country does not impose income tax on dividend paid by foreign corporation

OTHER INCOME

Income from any source whatever

- The words "income from any source whatever" discloses a legislative policy to include all income not expressly exempted from the class of taxable income under our laws ***(****Madrigal vs. Rafferty, supra; Commissioner vs. BOAC)*. The words "income from any source whatever" is broad enough to cover gains contemplated here. These words disclose a legislative policy to include all income not expressly exempted within the class of taxable income under our laws, irrespective of the voluntary or involuntary action of the taxpayer in producing the gains *(Gutierrez vs. Collector, CTA Case 65, Aug. 31, 1955)*.
- Any economic benefit to the employee whatever may have been the mode by which it is effected is taxable. Thus, in stock options, the difference between the fair market value of the shares at the time the option is exercised and the option price constitutes additional compensation income to the employee *(Commissioner vs. Smith, 324 U.S. 177)*.

EXCLUSIONS

1. Life insurance proceeds

2. Amount received by insured as return of premium

3. Gifts, bequests and devises

4. Compensation for injuries or sickness

5. Income exempt under treaty

6. Retirement benefits, pensions, gratuities

   - R.A. 7641 (5 yrs & 60 yrs) and R.A. 4917 (10 yrs & 50 yrs)
     - Interest income of employee trust fund or accredited retirement plan is exempt from FWT *(CIR v. GCL Retirement Plan, 207 SCRA 487)*
   - Amount received as a consequence of separation because of death, sickness *(that will endanger life of employee)* or other physical disability or for any cause beyond the control of employee

7. Miscellaneous items

   - Income of foreign government
   - Income of government or its political subdivisions from any public utility or exercise of governmental function

EXEMPT ASSOCIATIONS

- ***The phrase "any of their activities conducted for profit" does not qualify the word "properties."***-- The phrase "any of their activities conducted for profit" does not qualify the word "properties." This makes income from the property of the organization taxable, regardless of how that income is used – whether for profit or for lofty non-profit purposes. Thus, the income derived from rentals of real property owned by the Young Men's Christian Association of the Philippines, Inc. **(YMCA)**, established as a welfare, education and charitable non-profit corporation, is subject to income tax. The rental income cannot be exempted on the solitary but unconvincing ground that said income is not collected for profit but is merely incidental to its operation. The law does not make a distinction. Where the law does not distinguish, neither should we distinguish. Because taxes are the lifeblood of the nation, the Court has always applied the doctrine of strict interpretation in construing tax exemptions. YMCA is exempt from the payment of property taxes only but not income taxes because it is not an educational institution devoting its income solely for educational purposes. The term "educational institution" has acquired a well-known technical meaning. Under the Education Act of 1982, such term refers to schools. The school system is synonymous with formal education which "refers to the hierarchically structured and chronologically graded learnings organized and provided by the formal school system and for which certification is required in order for the learner to progress through the grades or move to higher levels *(Commissioner vs. Court of Appeals and YMCA of the Phils., G.R. No. 124043, Oct. 14, 1998)*.

DEDUCTIONS

- KINDS OF DEDUCTIONS

  1. Itemized Deductions
  2. Optional Standard Deductions

3. Special Deductions

- ITEMIZED DEDUCTIONS

1. Business expenses, incl. research and development
2. Interests
3. Taxes
4. Losses
5. Bad debts
6. Depreciation
7. Depletion
8. Charitable contributions
9. Contributions to pension trust
10. Health or hospitalization premium

- BUSINESS EXPENSES

a. The expense must be ordinary and necessary;
b. Paid or incurred during the taxable year;
c. In carrying on or which are directly attributable to the development, management, operation and/or conduct of the trade, business or exercise of profession;
d. Supported by adequate invoices or receipts;
e. Not contrary to law, public policy or morals. Operating expenses of an illegal or questionable business are deductible, but expenses of an inherently illegal nature, such as bribery and protection payments, are not.
f. The tax required to be withheld on the amount paid or payable is shown to have been paid to the BIR.

- An expense is "ordinary" when it connotes a payment, which is normal in relation to the business of the taxpayer and the surrounding circumstances.
- An expense is "necessary" where the expenditure is appropriate or helpful in the development of taxpayer's business or that the same is proper for the purpose of realizing a profit or minimizing a loss.
- P9.4 M paid in 1985 for advertising a product was staggering incurred *to stimulate future sales* to "create or maintain some form of goodwill for the taxpayer's trade or business or for the industry or profession of which the taxpayer is a member."
- "Goodwill" generally denotes the benefit arising from connection and reputation, and efforts to establish reputation are akin to acquisition of capital assets. Therefore, expenses related thereto are not business expenses but capital expenditures *(CIR vs. General Foods Phi., GR No. 143672, Apr. 24, 2003).*
- Legal and accountant's fees for prior years were not billed in corresponding years (1984-1985). It was paid by taxpayer in succeeding year (1986) when it was billed by the lawyer and accountant. Taxpayers uses accrual method of accounting.
- Accrual of income and expense is permitted when the "all events test" has been met. This test requires (1) fixing a right to income or liability to pay, and (2) the availability of reasonably accurate determination of such income or liability. It does not, however, demand that the amount of income or liability be known absolutely; it only requires that a taxpayer has at its disposal the information necessary to compute the amount with reasonable accuracy, which implies something less than an exact or completely accurate amount.
- Moreover, deduction takes the nature of tax exemption; it must be construed strictly against the taxpayer *(Commissioner vs. Isabela Cultural Corporation, G.R. No. 172231, Feb. 12, 2007).*

- INTEREST EXPENSE

  a. There must be a valid and existing indebtedness;
  b. The indebtedness must be that of the taxpayer;
  c. The interest must be legally due and stipulated in writing;
  d. The interest expense must be paid or incurred during the taxable year;
  e. The indebtedness must be connected with the taxpayer's trade, business or exercise of profession;
  f. The interest payment arrangement must not be between related taxpayers as mandated in Section 34(B)(2)(b), in relation to Section 36(B), of the Tax Code;
  g. The interest is not expressly disallowed by law to be deducted from the taxpayer's gross income (e.g., interest on indebtedness to finance petroleum operations); and
  h. The amount of interest deducted from gross income does not exceed the limit set forth in the law. In other words, the taxpayer's otherwise allowable deduction for interest expense shall be reduced by forty-two percent (42%) of the interest income subjected to final tax beginning November 1, 2005 under R.A. 9337, and that effective January 1, 2009, the percentage shall be thirty-three percent (33%) *[Sec. 34(B)(1), NIRC]*.

- TAXES

  a. Payments must be for taxes, national or local;
  b. Taxes are imposed by law upon the taxpayer;
  c. Taxes must be paid or accrued during the taxable year in connection with the taxpayer's trade, business or profession; and
  d. Taxes are not specifically excluded by law from being deducted from the taxpayer's gross income.

- LOSSES *(Rev. Regs. No. 12-77 and Rev. Regs. No. 10-79)*

  a. The loss must be that of the taxpayer;
  b. The loss is actually sustained and charged off within the taxable year;
  c. The loss is evidenced by a closed and completed transaction;
  d. The loss is not claimed as a deduction for estate tax purposes;
  e. The loss is not compensated for by insurance or otherwise;
  f. In the case of an individual, the loss must be connected with his trade, business or profession, or incurred in any transaction entered into for profit though not connected with his trade, business or profession; and
  g. In the case of casualty loss, it has been reported to the BIR within forty-five days from date of occurrence of the loss.

- BAD DEBTS

  a. There must be an existing indebtedness due to the taxpayer which must be valid and legally demandable;
  b. The same must be connected with the taxpayer's trade, business or practice of profession;
  c. The same must not be sustained in a transaction entered into between related parties enumerated under Sec. 36(B) of the Tax Code of 1997;
  d. The same must be actually charged off the books of accounts of the taxpayer as of the end of the taxable year; and
  e. The same must be actually ascertained to be worthless and uncollectible as of the end of the taxable year.

- TAX BENEFIT RULE

  - The taxpayer is obliged to declare as taxable income any subsequent recovery of bad debts in the year they were collected to the extent of the tax benefit enjoyed by the taxpayer when the bad debts were written off and claimed as deduction from gross income.
  - It also applies to taxes previously deducted from gross income but which were subsequently refunded or credited by the BIR. He has to report income to the extent of the tax benefit derived in the year of deduction.

- DEPRECIATION

  a. The allowance for depreciation must be reasonable*;*
  b. It must be for property arising out of its use in the trade or business, or out of its not being used temporarily during the year*;*
  c. It must be charged off during the taxable year from the taxpayer's books of accounts;
  d. Depreciation shall be computed on the basis of historical cost or adjusted basis. While financial accounting allows computation based on appraised value, recovery of investment for tax purposes shall be limited to historical cost.

- CHARITABLE CONTRIBUTIONS

  1. The charitable contribution must actually be paid or made to the Philippine government or any political subdivision thereof exclusively for public purposes, or any of the accredited domestic corporation or association specified in the Tax Code;
  2. It must be made within the taxable year;
  3. It must not exceed 10% (individual) or 5% (corporation) of the taxpayer's taxable income before charitable contributions (whether deductible in full or subject to limitation);
  4. It must be evidenced by adequate receipts or records; and
  5. The amount of charitable contribution of property other than money shall be based on the acquisition cost of said property *(Sec. 34(H), NIRC)*. The limitation is imposed to prevent abuse of donating paintings and other valuable properties and claiming excessive deductions therefrom.

- **Optional Standard Deduction**

  - Privilege is available only to citizens or resident aliens as well corporations subject to the regular corporate income tax; thus, non-resident aliens and non-resident foreign corporations are not entitled to claim the optional standard deduction.
  - Standard deduction is optional; i.e., unless taxpayer signifies in his/its return his/its intention to elect this deduction, he/it is considered as having availed of the itemized deductions;
  - Such election when made by the qualified taxpayer is irrevocable for the year in which made; however, he can change to itemized deductions in succeeding year(s);
  - Amount of standard deduction is limited to 40% of taxpayer's gross sales or receipts (in the case of an individual) or gross income (in the case of a corporation). If the individual is on the accrual basis of accounting for his income and deductions, OSD shall be based on the gross sales during the year. If he employs the cash basis of accounting, OSD shall be based on his gross receipts during the year. It should be noted that cost of sales or cost of services shall not be allowed to be deducted from gross sales or receipts.
  - A general professional partnership (GPP) may claim either the itemized deductions or in lieu thereof, the OSD allowed to corporations in claiming the deductions in an amount not exceeding 40% of its gross income. The net income determined by either the itemized deduction or OSD

from the GPP's gross income is the distributable net income from which the share of each share is to be ascertained.

- Proof of actual expenses is not required; hence, he is not also required to keep books of accounts and records with respect to his deductions during the year.

PERSONAL EXEMPTIONS

RA 8424: Jan 1, 1998

- Single and estate or trust – P20,000
- Head of family – P25,000
- Married – P32,000
- For each child, not to exceed 4 – P8,000

RA 9504: July 6, 2009

- Individual, whether single, HOF, or married – P50,000
- For each child, not to exceed 4 – P25,000
- Law exempts income of minimum wage earners and increases OSD from 10% to 40% of gross sales or receipts, for individuals, and of gross income, for corporations.

Status-at-the-end-of-the-year rule

"Status-at-the-end-of-the-year rule" which means that whatever is the status of the taxpayer at the end of the calendar year shall be used for purposes of determining his personal and additional exemptions generally applies. A change of status of the taxpayer during the taxable year generally benefits, but does not prejudice, him. Thus, if he marries at the end of the year, he shall be entitled to personal exemption of P32,000/P50,000. If a child is born at any time during the calendar year, even on the last day of the year, the taxpayer is entitled to claim his child as a dependent entitling him to deduct additional exemption of P8,000/P25,000 for that year. On the other hand, if one of his qualified dependent children dies during the year, the law considers that the child died on the last day of the year; hence, he is entitled to claim the full amount of additional exemption of P8,000/P25,000 for the deceased child for the year.

ACCOUNTING METHODS

1. Cash method

2. Accrual method

   - All events test; amounts received in advance are not treated as revenue of the period in which received but as revenue of future periods in which earned *(Manila Mandarin Hotels vs. CIR, CTA Case No. 5046, Mar 24, 1997)*.

3. Installment sales

   - Sale on the installment plan

     - Initial payments do not exceed 25% of GSP

   - Deferred payment sale, not on the installment plan

     - Initial payments exceed 25% of GSP

4. Percentage of completion

5. Crop year method

FILING OF TAX RETURN

- SUBSTITUTED FILING OF ITR: No individual income tax return for the year will be filed by the employee concerned, and the employer is the one that files the return for him
  - Applies only to individuals
  - With only one (1) employer
  - Who correctly withholds the income tax on compensation income paid to the employee and remits the same to the BIR
- Substituted filing of return does not apply when the conditions above are not met, such as when the individual has (a) two or more employers, (b) mixed incomes, (c) correct WT was not deducted from compensation income, etc.
- Individual deriving mixed income, or purely business/ professional income, or other income must file his quarterly income tax returns (BIR Form 1700 Q) and annual income tax return (BIR Form 1700) as follows:

Period	Due Date for Filing Return
Q1 Return	April 15 of same year
Q2 Return	August 15 of same year
Q3 Return	November 15 of same year
Annual Return	April 15 of the following year

- A domestic corporation and resident foreign corporation shall file quarterly corporate income tax return (BIR Form 1702 Q) and annual corporate income tax return (BIR Form 1702 as follows:

Q1 Return	May 31 of same year
Q2 Return	August 31 of same year
Q3 Return	November 30 of same year
Annual Return	April 15 of the following year (if on calendar year), or 15th day of the fourth month following the close of the fiscal year (if on fiscal year).

- Computation of the quarterly and annual tax returns of individuals (except those receiving purely compensation income) and corporations shall be made on the ***cumulative basis***; i.e., gross income and deductions are consolidated and the income tax liability is computed on the consolidated net income, and the income taxes paid for the preceding quarter(s) are credited against the consolidated income tax due.

REFUND OR TAX CREDIT

- Taxpayer has 3 options: refund, tax credit, or carry over excess withholding tax or payment.
- However, once taxpayer exercises option to carry over, such option is irrevocable for that taxable period and no application for refund or tax credit shall be allowed *(Paseo Realty v CA, GR 119286, Oct 13, 2004)*.

- While a taxpayer is given the choice to claim refund or tax credit, such election is not final. Prior verification and approval by CIR is required. Such remedy is not absolute and mandatory *(ibid)*.
- Conditions for grant of refund or tax credit: (1) claim was filed within 2 years from date of payment; (2) income payment was declared in tax return; and (3) fact of withholding is established by copy of BIR Form 2307 *(BF Bank v. CA, GR 155682, Mar 27, 2007)*.
- In case of dissolution of corporation, the 2-year period for claim for refund is counted 30 days after SEC approval of plan for dissolution, which is considered the date of payment of taxes withheld on earned income *(BPI v. CIR, GR 144653, Aug 28, 2001)*.

WITHHOLDING TAX

- An income payment is subject to the expanded withholding tax, if the following conditions concur:

    a. An expense is paid or payable by the taxpayer, which is income to the recipient thereof subject to income tax;
    b. The income is fixed or determinable at the time of payment;
    c. The income is one of the income payments listed in the regulations that is subject to withholding tax, except when payor is a Top 20,000 Corporation;
    d. The income recipient is a resident of the Philippines liable to income tax; and
    e. The payor-withholding agent is also a resident of the Philippines.

- **EXEMPT FROM EWT**

    1. National government and its instrumentalities, including provincial, city or municipal governments and *barangays*, except government-owned or controlled corporations;
    2. Persons enjoying exemption from payment of income taxes pursuant to the provisions of any law, general or special, such as but not limited to the following:
        a. Sales of real property by a corporation which is registered with and certified by HLURB or HUDCC as engaged in socialized housing project where the selling price of the house and lot or only the lot does not exceed P180,000 in Metro Manila and other highly urbanized areas and P150,000 in other areas;
        2. Corporations registered with the BOI, PEZA, and SBMA, enjoying exemption from income tax under E.O. 226, R.A. 7916, and R.A. 7227;
        3. Corporations which are exempt from income tax under Section 30 of the Tax Code, such as GSIS, SSS, PHIC, PCSO, and PAGCOR;
        4. General professional partnerships; and
        5. Joint ventures or consortium formed for the purpose of undertaking construction projects or engaging in petroleum, coal, geothermal and other energy operations
        6. International carriers (by air or water) subject to 2.5% Gross Phil Billings

ASSESSMENT CYCLE

Filing of tax return
- Law prescribes due date

Tax audit by BIR
- 120 days + 120 days

Informal Conference
Preliminary Assessment Notice (PAN)

Reply to PAN
- 15 days from receipt

Final Assessment Notice (FAN)
- 3 years or 10 years

Protest to FAN
- 30 days from receipt

Supplemental Protest
- 60 days from filing of protest

BIR ACTION (Cancell assessment/ Deny protest/ Revise assessment)
- 180 days from filing of protest, if any, or supplemental protest

BIR INACTION
Appeal to CTA
- 30 days from date of receipt of denial of protest or lapse of 180 days

Appeal to CTA en banc
- 15 days from date of receipt; addl 15 days may be granted by CTA after payment of docket fee.

DEADLINES FOR FILING OF TAX RETURNS AND PAYMENT OF TAXES

1. INCOME TAX
   a. Quarterly Return
      - RCIT: 60 days after end of quarter
      - Self-employed: Apr 15 (Q1) and 45 days after EOQ (Q2&3)
   b. Annual Return
      - 15th day of fourth month of the following year
   c. Capital gains tax return
      - 30 days from date of sale

2. WITHHOLDING TAX
   a. Creditable WT return
      - 10 days after end of month, except for December, Jan 15 of following year
   b. Final WT return
      - 10 days after end of month, except for December, Jan 15 of following year

3. TRANSFER TAXES
   - estate tax
      - 6 months from date of death
   - donor's tax
      - 30 days from date of donation

4. VAT
   a. Monthly Declaration
      - 20th day of following month
   b. Quarterly Return
      - 25th day following close of quarter

5. OTHER PERCENTAGE TAX
   a. Monthly return
      - 20th day of following month

6. DST
   a. DST return
      - 5th day of following month

TAX REMEDIES UNDER THE TAX CODE

REMEDIES OF TAXPAYERS

- ADMINISTRATIVE REMEDY
  - BEFORE PAYMENT OF TAX
    - PROTEST OF ASSESSMENT
  - AFTER PAYMENT OF TAX
    - TAX CREDIT, OR
    - REFUND
- JUDICIAL REMEDY
  - APPEAL TO COURT OF TAX APPEALS

REMEDY AFTER FILING TAX RETURN

- After filing original tax return, taxpayer may file amended tax return within 3 years from date of filing original return, provided that no "audit notice" in the meantime has been served upon him by the BIR.
  - "Tentative" financial statements for the year
  - Filing of amended tax return may extend period to assess tax
- Audit notice may be in any of the following forms:
  - Letter of Authority (LA)
  - Tax Verification Notice (TVN)
  - Letter Notice (LN)
  - Memorandum of Assignment (MOA)
- "White Paper" is not an audit notice.

DURING TAX AUDIT

1. Checklist of books and records to produce
   a. First Notice
   b. Second Notice
   c. Final Notice
   d. *Subpoena DucesTecum*[signed by ACIR (Legal Service) or Chief, Legal Division
   e. Filing of **Complaint** for contempt by BIR with the fiscal's office
      - Payment of compromise penalty
   f. Filing of **Information** by fiscal with regular court

2. Revenue officers authorized to conduct audit

3. Variances in figures shown in tax returns, audited financial statements, alpha lists, inventories, SLS & SLP, etc.
   a. Reconciliation statement
   b. Breakdown of accounts
   c. Reclassification or presentation of accounts
   d. Other incomes

4. WAIVER OF STATUTE OF LIMITATION
   - Who initiates execution of waiver?
   - Policy of the company on waivers?
   - Implications of not signing or execution of waiver?
     a. <u>Absence of waiver</u>
        Immediate issuance of PAN & FAN. Written reports of exam shall be submitted by revenue officers not later than 6 months before prescriptive period to assess.

   b. <u>Execution of waiver</u>
      Period to assess may be extended by valid waiver timely executed, but taxes not assessed at time of execution of valid waiver is not extended.

- PAN is easier to be cancelled or reduced than FAN
- Until FAN is issued by BIR, there is no legal liability to pay deficiency tax on the part of taxpayer
- There must be a valid waiver that conforms with the provisions of RMO 20-90 in order to extend period of prescription

PRE-ASSESSMENT NOTICE

- **PAN** gives taxpayer the opportunity to explain his position on the findings of revenue officers during the audit and is part of the due process clause.

- **GENERAL RULE**: PAN must be issued by BIR, before issuing FAN and demand letter.

- **EXCEPTIONS**: No PAN is required.
   a. Deficiency tax is the result of mathematical error
   b. Discrepancy is between amount of tax withheld and amount remitted to BIR
   c. Taxpayer who opted to claim refund/tax credit also carried over and applied the same against tax of next taxable quarter
   d. Excise tax due has not been paid
   e. Constructive importation *(Sec. 228, NIRC)*

REPLY TO PAN

1. WHEN TO FILE REPLY?
   - Within 15 days from date of receipt of PAN
   - Extension may be requested from BIR

2. CONTENT OF REPLY?
   - Explanation to every item of income or deduction or other matter questioned by revenue officer
   - Factual and/or legal bases, including applicable jurisprudence
   - Prays for total or partial cancellation of PAN

3. QUESTION OF FACT OR LAW
   - **Question of fact**
     Truth or falsity? These are handled by revenue officers of audit office and generally need documentary evidence.
   - **Question of law**
     Law on certain set of facts? These are handled by lawyers at Legal Division and generally require discussion of the law and jurisprudence.

4. DUE PROCESS OF LAW
   - Issuance of FAN and Demand Letter is tantamount to denial of Reply to PAN. Essential elements of due process are notice and opportunity to present one's side *(Phil. Health Care Providers vs. CIR)*

FINAL ASSESSMENT NOTICE

ESSENTIAL REQUIREMENTS

a. There is an assessment. FAN (BIR FORM 17.08) contains name, address, and TIN; kind of tax; period covered; basic tax and penalties; date tax must be paid, while demand letter explains basis of assessment.

b. Must state facts, law, or jurisprudence; otherwise, assessment is void

A. *Pre-Subic Enron Power Corp (up to 2008)*
   - Taxpayer was fairly informed since it was able to categorically explain how assessment came about *(Toledo Power Co. vs. CIR)*
   - PAN has audit sheet but did not explain how assessment was arrived. Demand letter did not contain the information on law and facts*(HPCO Agridev Corp vs. CIR)*

B. *Power Subic Enron Corp v. CIR (Jan, 2009):*
   - Basis is stated in the FAN.

c. Signed by the Commissioner or his authorized representative

d. Issued within the prescriptive period under the law or the extended period agreed upon between the parties

e. Served by personal delivery or by registered mail to the proper person

f. FAN is covered by a validly issued letter of authority

ASSESSMENT

1. WHAT IS AN ASSESSMENT?

   - Notice that taxpayer owes government a sum of money
   - Contains computation of tax liability and a demand for payment of tax within a certain period *(CIR v. Pascor Realty & Dev Corp)*

2. PURPOSE OF ASSESSMENT

   - To establish tax liability where an assessment is required

3. FORMS OF ASSESSMENT

   - Formal assessment notice (FAN)
   - Collection letter
     a. Letter demanding payment of erroneously refunded amount *(Guagua Electric Co v. CIR)*, or amount paid by bouncing check *(Republic v. Limaco & de Guzman)*
     b. Follow-up or collection letter duly received by taxpayer within the prescriptive period (TAXPAYER DENIED RECEIPT OF ORIGINAL DEMAND LETTER AND ASS. NOTICE) *(Republic v. Nielson & Co)*

   NOTE: Letter from revenue officer granting opportunity to disprove findings (SHOW-CAUSE LETTER) is NOT an assessment

4. CASES NOT CONSIDERED ASSESSMENT

   - Letter from revenue officer granting opportunity to disprove findings (SHOW-CAUSE LETTER)
   - Pre-Assessment Notice (PAN)
   - Affidavit executed by revenue officers in support of criminal complaint filed with the DOJ against a taxpayer, showing a computation of deficiency taxes *(CIR v. Pascor Realty)*

5. FAN AND DEMAND LETTER MUST ALWAYS GO TOGETHER
   - FAN alone does not comply with the requirements of Sec. 228 of the Tax Code
   - In some cases, “Details of Discrepancies” is attached to demand letter.

6. TAXPAYER OR HIS AUTHORIZED REPRESENTATIVE MUST RECEIVE ASSESSMENT NOTICE
    - Actual receipt or constructive receipt
    - No assessment was served on the Estate as to the alleged under-payment of tax, the same having been served to a trustee, whose relationship with the trustorhad been severed when the latter died. Absent this assessment, no proceedings could be initiated in court for the collection of said tax (Estate of J. Diezvdade Gabriel v. CIR, 2004).

7. CHANGE OF ADDRESS OF TAXPAYER
    - Change of address must be communicated in writing to BIR; otherwise, prescriptive period is suspended.

8. DATE OF RECEIPT OF FAN
    - Stamp date on envelope and face of FAN and Demand Letter

9. WHEN MUST ASSESSMENT BE MADE? (Sec. 203 & 222, NIRC)

    – RETURN WAS FILED

        - Not false or fraudulent – 3 years from filing of return
        - False or fraudulent – 10 years from date of discovery of false or fraudulent return

    – NO RETURN WAS FILED

        - 10 years from date of discovery of omission

    NOTE: If assessment due falls on Saturday, government has next business day within which to assess (CIR v. Western Pacific Corp)

10. WHEN IS ASSESSMENT DEEMED MADE?

    – Issue date of assessment notice is not reckoning point for prescription
    – Date the assessment notice and demand letter is released, mailed or sent to taxpayer constitutes actual assessment *(Republic v. Limaco & de Guzman)*
    – Presumption of receipt in the regular course of mail applies, if it was properly addressed, postage was prepaid, and was mailed. If one element is absent, presumption does not lie *(Enriquez v. Sunlife of Canada)*

COUNTING OF PERIOD

- TAXABLE YEAR

    – Normal year (365 days)
    – Leap year (366 days)

- If there is a leap year within the prescriptive period (3 years from filing of return), a year shall be deemed to have 365 days only *(NAMARCO v. Tecson, 29 SCRA 70)*. Thus, assessment issued on April 15 of the third year from filing of return shall be treated as invalid due to prescription.

- EO 292 (Administrative Code of 1987), being the more recent law than Civil Code, governs the computation of legal period. Accordingly, a year shall be understood to be 12 calendar months; a month of 30 days, unless it refers to a specific calendar month *(CIR vs. Primetown Property Group, GR No. 162155, Aug 22, 2007)*.

ASSESSMENT NOTICE

- Preliminary collection letter presupposes the existence of valid assessment notice.
- Preliminary collection letter shall serve as assessment notice, if it was initial notice received by taxpayer, taxpayer did not receive any assessment notice, and no follow-up letter was sent or preliminary conference was arranged.
- 30-day period to protest shall commence from date of receipt of preliminary collection letter *(United International Pictures vs. CIR, CTA Case No. 5884, Jan. 5, 2002)*

PROTEST

- Valid protest of an assessment is one assailing the formal assessment notice (FAN) and the letter of demand, not the preliminary assessment notice (PAN). PAN is required merely to inform the taxpayer of the proposed assessment.
- Failure to protest within 30 days will make the formal assessment notice final and executory.
- Failure to respond to PAN within 15 days will render taxpayer in default and a FAN would subsequently be issued *(Cebu Rosver Pawnshop vs. CIR, CTA Case No. 6425, Mar. 17, 2003)*.

- PROTEST LETTER MUST BE FILED WITHIN 30 DAYS FROM DATE OF RECEIPT OF ASSESSMENT
    1. NATURE OF PROTEST
        – **Request for reconsideration**(review will be made on the basis of arguments and documents already cited or submitted during the audit)
        – **Request for reinvestigation**(review will be made on the basis of additional arguments and documents that would be submitted during the protest period)
    2. DATE OF RECEIPT OF ASSESSMENT
    3. CONTENTS OF PROTEST LETTER
        – FINDINGS TO WHICH TAXPAYER AGREES
            - No action on protest will be made by BIR until admitted tax is paid by taxpayer
        – FINDINGS TO WHICH TAXPAYER DOES NOT AGREE AND STATEMENT OF FACTS AND/OR LAW
- ABSENCE OF VALID AND TIMELY PROTEST MAKES ASSESSMENT RECEIVED BY TAXPAYER AS FINAL AND EXECUTORY

DENIAL OF PROTEST

1. DIRECT DENIAL

    - Letter of CIR states in clear terms his denial of protest.
    - Revenue Regulations No. 12-99
    - The CIR should always indicate to taxpayer in clear and unequivocal language whenever his action on an assessment questioned by taxpayer constitutes his final determination on disputed assessment, as contemplated by Sec 7 and 11 of RA 1125. Without needless difficulty, taxpayer would be able to determine when his right to appeal to the tax court accrues (CIR v. BPI, 2007; CIR v. Advertising Associates; CIR v. Union Shipping).

2. INDIRECT DENIAL

- Final Notice Before Seizure constitutes as a decision on a protested assessment; hence, appealable to the CTA (CIR vs. Isabela Cultural Corp, 361 SCRA 71 (2004)
- Issuance by BIR of Warrant of Distraint and Levy constitutes a denial of the protest.
- Filing of civil action by BIR in the proper court
- Referral to SOLGEN of case
- Inaction of Commissioner

INACTION OF COMMISSIONER

- The taxpayer has two options:
  - Wait for the decision of the Commissioner on the protest and file the appeal to the CTA within 30 days from date of receipt of the denial of protest; or
  - File appeal to the CTA within 30 days from lapse of the 180-day period (Lascona Land Co vs CIR, CTA Case No. 5777, Jan 4, 2000)
- INACTION IS DEEMED DENIAL OF PROTEST
- If the Commissioner or his duly authorized representative fails to act on the taxpayer's protest within one hundred eighty (180) days from date of submission by the taxpayer of the required documents in support of his protest, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the lapse of the said 180-day period; otherwise, the assessment shall become final, executory and demandable (Sec. 228, NIRC).
- The inaction of the Commissioner during the 180-day period, where a definite period is required by law to be made, shall be construed as a denial of the protest (R.A. 9282, Apr 25, 2004).
- Since the petitioner did not submit any additional document (in a supplemental protest) in support of his protest within sixty (60) days from the filing of its protest, the counting of the 180-day period was from the filing of the (original) protest.
- Accordingly, when respondent (CIR) failed to render his decision within 180 days from the filing of the taxpayer's protest, petitioner has 30 days after the lapse of the 180-day period to file an appeal to CTA (Oceanic Wireless Network vs. CIR, CTA Case No. 6111, Nov. 3, 2004)

APPEALS

1. ADMINISTRATIVE APPEAL
   - DECISION OF REGIONAL DIRECTOR MAY BE APPEALED TO COMMISSIONER
   - PRIOR EXHAUSTION OF ADM REMEDIES GIVES ADM AUTHORITIES PRIOR OPPORTUNITY TO DECIDE CONTROVERSIES WITHIN THEIR COMPETENCE *(Aguinaldo Industries Corp. v. CIR)* Decision of Regional Director on protest of taxpayer is not yet final; the same may be appealed to CIR, pursuant to Rev Regs No. 12-99.
   - What is appealable to the CTA under Tax Code and RA 1125, as amended by RA 9282, is the decision of the CIR on the disputed assessment.
   - Prior exhaustion of administrative remedies gives administrative authorities the opportunity to decide controversies within their competence (Aguinaldo Industries Corp. v. CIR)to correct action of subordinate officers and to notify government that such taxes have been questioned and should be borne in mind in estimating the revenue (CIR v. Acosta, 2007).

2. JUDICIAL APPEAL

- FINAL DECISION OF COMMISSIONER MAY BE APPEALED TO COURT OF TAX APPEALS
  - Where a taxpayer filed a valid protest within 30 days from date of receipt of assessment and on same day also filed with CTA a petition for review, there is yet no final decision of CIR on the protest that is appealable to CTA *(Moog Controls Corp vs. CIR, CTA Case No. 6700, Oct 18, 2004)*
- CTA DIVISION DECISION IS APPEALED TO CTA *EN BANC*
- COURT OF APPEALS *EN BANC* DECISION APPEALED TO SUPREME COURT

PETITION FOR REVIEW

- Petitioner maintains that its counsel's neglect in not filing petition for review within reglementary period (due to counsel's secretary) was excusable.
- The 30-day period to appeal is jurisdictional and failure to comply would bar the appeal and deprive the CTA of its jurisdiction. Such period is mandatory, and it is beyond the power of the courts to extend the same *(Chan Kian vs CTA, 105 Phil 906 (1959)*.
- The options granted to the taxpayer in case of inaction by the CIR is mutually exclusive and resort to one bars the application of the other. Petition for review was filed out of time (more than 30 days after lapse of 180 days), and petitioner did not file MR or appeal; hence, disputed assessment became final and executory.
- After availing of the first option (filing petition for review with CTA), petitioner cannot successfully resort to the second option (awaiting final decision of CIR) on the pretext that there is yet no final decision on the disputed assessment because of CIR's inaction.
- Assessments are presumed to be correct unless otherwise proven *(RCBC vs CIR, GR No. 168498, Apr 24, 2007)*.

PRESCRIPTION

- The 3-year period within which to assess any deficiency tax commences after the last day prescribed by law for the filing of the income tax return.
- For VAT, each taxable quarter shall have its own prescriptive period. VAT return is filed quarterly and a final return is not required at the end of the year.
- In case of creditable withholding taxes, the 3-year period shall be counted shall be counted from the last day required by law for filing monthly remittance return. Each monthly return is already a complete return. The annual information return submitted to BIR is just an annual report of income payments and taxes withheld and is not in the nature of a final adjustment return *(HPCO Agridev Corp. vs. CIR, CTA Case No. 6355, July 18, 2002)*
- Request for reconsideration or clarification on the assessment made by the taxpayer does not suspend the running of the statute of limitations. However, request for reinvestigation may suspend the running of prescriptive period when it has been granted by CIR *(BPI vs. CIR, GR No. 139736, Oct 17, 2005)*
- Mere filing of the protest letter without requesting for a reinvestigation does not suspend the running of the prescriptive period to collect *(Phil Global Communications vs. CIR, CTA EB Case No. 37, Feb. 2005)*
- Internal revenue taxes may be assessed or collected after the ordinary prescriptive period, if before its expiration, both the Commissioner and the taxpayer have agreed in writing to its assessment and/or

collection after said period. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.

- The running of the prescriptive periods for assessment and collection of taxes is suspended when the taxpayer requests for the reinvestigation which is granted by the Commissioner (Sec. 223, NIRC)
- The waiver must be in the form prescribed in RMO 20-90. Among others, the waiver (a) must indicate a definite expiration date agreed upon with the CIR; and (b) it should state the date of acceptance by the BIR. Without the date, it cannot be determined whether the waiver was actually accepted before the expiration of the 3-year period to assess.
- The requirement to furnish taxpayer a copy of the waiver of statute of limitations is not only to give notice of existence of document but of also of the acceptance by BIR and perfection of the agreement (Phil Journalists v. CIR, GR No. 162852, Dec 16,2004; FMF Dev Corp v. CIR).

REQUISITES OF WAIVER

- Waiver must be in the form identified in RMO 20-90;
- Expiry date of period agreed upon is indicated in the waiver;
- Waiver form requires statement of the kind of tax and amount of tax due; if not indicated in the waiver, there is no agreement;
- Waiver is signed by taxpayer or his authorized representative. In case of corporation, waiver is signed by any responsible official.
- CIR or his authorized representative shall sign waiver indicating that BIR has accepted and agreed to the waiver;
- Date of acceptance by BIR is indicated;
- Date of execution and acceptance by BIR should be before expiration of prescriptive period;
- Waiver is executed in 3 copies; second copy is for taxpayer. Fact of receipt by the taxpayer should be indicated in the original copy *(Pfizer, Inc. vs. CIR, CTA Case No. 6135, Apr. 21, 2003; FMF Dev. Corp. vs. CIR, CTA Case No. 6153, Mar. 20, 2003)*
- Waiver must indicate definite expiration date agreed upon by CIR and taxpayer
- Waiver should state date of acceptance by BIR. Without the date, it cannot be determined whether waiver was accepted before expiration of 3-year period.
- Taxpayer must be furnished copy of accepted waiver. Under RMO 20-90, second copy of waiver is for taxpayer. Fact of receipt by taxpayer of his copy should be indicated in the original copy *(Phil. Journalists vs. CIR, supra).*
- RMO 20-90 must be strictly construed against the government; they are mandatory in character. More-over, the waiver of the statute of limitations is not a waiver of the right to invoke the defense of prescription *(CIR vs. FMF Dev Corp, GR No. 167765, June 30, 2008).*

REMEDIES AFTER PAYMENT OF TAX

REFUND OR TAX CREDIT

- Tax refund is in the nature of tax exemption which must be construed strictly against the taxpayer. The taxpayer must present convincing evidence to substantiate claim for refund (FEBTC v. CIR, 2006).

- The BIR must release refund without any unreasonable delay what it has erroneously collected. Fair dealing is expected by taxpayers from BIR (CIR v. Acesite Hotel Corp, 2007).

- 3 conditions for grant of refund of creditable withholding tax:
    1. Claim is filed within 2 years from date of payment of tax;
    2. Return shows income payment was declared as part of gross income; and
    3. Fact of withholding is established by copy of statement duly issued by payor to the payee showing amount paid and amount of tax withheld therefrom (Bancov. CIR, 2007).

- 2-year period shall be counted from filing of final adjustment return (CIR v. PrimetownProperty Group, 2007). In case the tax account was paid on installment, the computation of the 2-year period should be from date of last installment (Atlas Consolidated v. CIR, 2007).

Sec. 112 (c)-Period within which refund or tax credit of input taxes shall be made-provides:

- In proper cases, the CIR shall grant a refund or issue tax credit certificate for creditable input taxes within 120 days from date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.
- In case of full or partial denial or inaction of CIR to act on the application within the period prescribed above, the taxpayer may, within thirty days from receipt of the decision denying the claim or after the expiration of the 120-day period, appeal the decision or the unacted claim with the CTA (CIR v. Aichi Forging Company of Asia, G.R. No. 184823, Oct 6, 2010).

FRAUD

- TAX AVOIDANCE is the tax saving device within the means sanctioned by law, used in good faith and at arms length.
- TAX EVASION is a scheme used outside of those lawful means and when availed of, it usually subjects the taxpayer to further or additional civil or criminal liabilities. It connotes 3 factors: end to be achieved; an accompanying state of mind that is described as evil, willful or deliberate; and course of action which is unlawful.
- Altonaga's sole purpose of acquiring and transferring title of properties on same day was to create tax shelter. Sale to him by CIC was a sham and without business purpose. Sale by Altonaga to RMI was tainted with fraud. Even before the purported sale of property by CIC to Altonaga, it received P40 M from RMI. That was reflected by RMI in its financial statement *(CIR vs. Estate of Benigno Toda, GR No. 147188, Sept. 14, 2004)*

<u>BIR ORGANIZATIONAL STRUCTURE</u>

NATIONAL OFFICE

COMMISSIONER OF INTERNAL REVENUE

Deputy Commissioner (Operations Group; Legal & Enforcement Group)

Assistant Commissioner (Large Taxpayers Service, Enforcement Service, Legal Service, Assessment Service & Collection Service)

Division Chief (LTAID, LTDO & National Investigation Division)

REGIONAL OFFICES

REGIONAL DIRECTOR

Assistant Regional Director

Division Chief (Assessment, Collection & Legal)
Revenue District Officer & Special Investigation Division

DUTIES OF BIR

- To assess and collect taxes
- To enforce forfeitures, fines and penalties
- To execute judgments in all cases decided in its favor by the tax court and ordinary courts
- To administer supervisory and police powers conferred upon it by law

POWERS OF CIR

- To interpret tax laws and regulations
- To decide on disputed assessments and refunds/credits
- To examine books and records of taxpayers and to assess correct taxes. However, (a) when a *report required by law* is not forthcoming within the time fixed by law or rules, or (b) there is reason to believe that such report is false, incomplete or erroneous, CIR shall assess proper tax based on "best evidence obtainable"