

KEYNOTE SPEECH OF
COURT OF TAX APPEALS
ASSOCIATE JUSTICE CATHERINE T. MANAHAN
(TMAP 2021 Induction of Directors and Officers
January 28, 2021)

To the newly-elected and soon to be inducted Directors and Officers of the TAX MANAGEMENT ASSOCIATION OF THE PHILIPPINES for calendar year 2021, active members, distinguished guests, ladies and gentlemen, Good Afternoon and a warm hearty congratulations to the leaders of this prestigious professional organization.

Thank you for your kind invitation to this momentous inauguration and oath-taking of the 2021 Directors and Officers of TMAP. It is indeed a welcome reunion with you since I attended the induction of your immediate past President Romeo Duran who was sworn in by my colleague in the Court of Tax Appeals Honorable Justice Ma. Belen Liban last January 2020. I am honored and privileged to lead today's induction of your incoming set of directors and officers. Again CONGRATULATIONS to your new set of TMAP leaders.

As I was looking at the TMAP's logo for this year, the theme of your newly elected President Precy Valer is very apt: UPHOLDING TAXPAYER RIGHTS PROMOTING COMPLIANCE FUELING RECOVERY. As a former member and president of TMAP, I find it quite fitting and to the tee to what TMAP aims to achieve, and that is- ensuring that tax laws are faithfully complied with, assisting taxpayers to just pay what is legally due, no more no less and on the overall, helping foster honesty and integrity in tax administration that will fuel the overall economic development and progress of our country.

Let me just focus on the first part of the theme, that is UPHOLDING TAXPAYER RIGHTS... some of these rights can cover the following areas, namely :

- Conduct of **public hearings** before adopting new revenue regulations to implement tax laws;
- Observance of **due process** in the issuance of tax assessment notices;

- Proper dissemination of BIR rules as part of **taxpayer's education; and**
- Due respect for and **observance by the BIR of Court Judgments that are favorable to the taxpayers.**

On the first area, this is where TMAP can trailblaze as far as representing the taxpayers in the BIR is concerned when the latter exercises its rulemaking power in order to come up with revenue regulations that will take into account the existing limitations and realistic conditions prevailing on the ground . By doing so, it will ensure that the taxpayers will have little or no difficulty complying with these issuances and meeting their tax obligations. Public hearings will ensure that the regulations to be crafted are not based on mere theoretical assumptions. Of course, this must also hold true in the drafting of tax laws where Congress is expected to conduct public hearings likewise and wherein TMAP submits position papers to present the side of the taxpayers.

On the second area, the decisions of the Supreme Court as well as the Court of Tax Appeals on the matter of due process have generally upheld the right of the taxpayers being issued preliminary assessment notices or PAN to be given a period of 15 days from receipt of the PAN to reply or impugn such PAN before the BIR can issue the final assessment notice together with the formal letter of demand. Failure on the part of the BIR to observe this has resulted, more often than not, in the invalidation of the tax assessments and declaration of any and all collection efforts subsequent thereto as bereft of legal and jurisprudential bases.

As regards the proper dissemination of the latest jurisprudence as an aspect of upholding taxpayer's rights, the BIR must publish and disseminate any new ruling of the highest court of the land in a **Revenue Memorandum Circular** in order to officially inform the taxpayers and effectuate its new interpretative pronouncements regarding tax laws; a latest example is the February 2020 Supreme Court decision in the case of **CIR vs Lucio Co et. al** wherein the court held that there is no need to secure a BIR ruling in order to enjoy the tax exemption provisions of Sec. 40 (C)(2) of the National Internal Revenue Code as amended on tax-free exchange since the basis of the tax exemption is the law and not the confirmatory BIR ruling being required by the BIR . Similar to the earlier ruling on the case of **CIR vs Aichi** regarding the mandatory nature of the 120-day period for processing claims for VAT refund which sets a cut-off

period, the BIR should also issue a BIR ruling or an RMC to this effect. Remember the celebrated *Deutsche Bank ruling* which upheld the *pacta sunt servanda* doctrine in the case of applications for tax treaty relief? This SC ruling was not at all disseminated in a published RMC.

And finally, on the propriety of respecting the judgments of the Courts that invalidate tax assessments, the right of the taxpayer to be spared from post judgment collection enforcements of void assessments must be respected. Although the NIRC contains a section that provides that no injunction can restrain the collection of taxes or issue writs of injunction, the Charter of the CTA authorizes this special appellate court to suspend the collection of taxes if the grounds for such writs exist.

These are just snippets from the top of my head which I sincerely hope can help jumpstart the TMAP governance of President Precy and her Board with the collective cooperation of the entire TMAP membership. Again, I wish you all God speed and just as the Good Book says, may you lean not on your own understanding but put your trust in the Lord who will bring your work to perfection.

Good afternoon to all and THANK YOU.