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Notice of Informal Conference Restored In The Tax Audit Process

The Bureau of Internal Revenue (“BIR”) has recently issued Revenue Regulations (“RR”) No. 7-18, dated 22 January 2018. This issuance restores the conduct of an informal conference as a preliminary step in the in the issuance of a deficiency tax assessment, thereby amending RR No. 12-99 as amended by RR No. 18-13 .

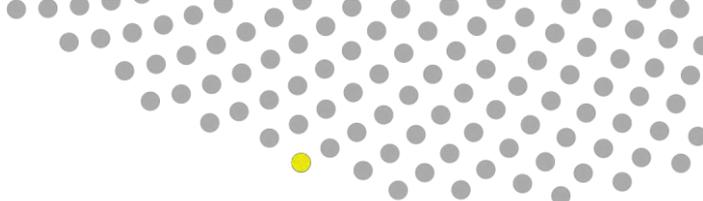
The issuance of a Notice of Informal Conference (“NIC”) is a due process requirement.^[1] It is the second phase in the BIR audit process.

A BIR audit is commenced through the Service of a Letter of Authority (“LA”) by the Revenue District Office with jurisdiction over the taxpayer, the Special Investigation Division, as the case may be (in the case of Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National Office). The LA details the names of the BIR officers who are authorized to audit the taxpayer for a concerned taxable year, together with a request for documents that are necessary to commence the audit. Based on the documents submitted by a taxpayer pursuant to the BIR’s request, the appointed BIR examiners will then summarize their preliminary findings in a Report of Investigation, which informs the taxpayer in writing of the findings. At this point, the amounts of the BIR’s proposed assessment for deficiency taxes and penalties are usually the highest. However, through the informal conference, the taxpayer is given an opportunity to present his side and explanations concerning the BIR’s preliminary findings.

Under RR No. 7-18, if the taxpayer is not amenable with the findings of the revenue officer who conducted the audit, an NIC shall be served on the taxpayer in order to afford the latter the opportunity to be heard and present his side of the case. The service of the NIC will be followed by an informal conference, which will not extend beyond 30 days from the taxpayer’s receipt of the NIC. Notably, the restoration of the NIC in the audit process is now time-bound, unlike previously in RR 12-99, which, in practice, can extend indefinitely.

During the NIC period, a series of discussions, documentary submissions and meetings typically take place between the BIR and the taxpayer. If a taxpayer is able to convince the BIR of the merits of its arguments and defenses against the BIR’s preliminary findings, the taxpayer may already opt to pay the proposed deficiency taxes pertaining to the unresolved issues, to stop the running of interest penalties on the proposed assessment.

After the informal conference, if the taxpayer is still found to be liable for deficiency taxes and is not amenable with the findings due to unresolved factual or legal issues which remain on the assessment, a deficiency tax assessment will then be issued, which will trigger the entire assessment process. In such case, the Revenue District Officer or the Chief of the Special Investigation Division of the Revenue Regional Office, or the Chief of Division in the National Office, as the case may be, shall endorse the case within 7 days from the conclusion of the Informal Conference to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative for issuance of a deficiency tax assessment. At this point, the docket of the case will be endorsed for review to the Assessment Division of the Regional Office (in the case of findings on taxpayers registered with the BIR district offices), or to the BIR Commissioner or her duly authorized representative (in the case of large taxpayers and those investigated by the BIR National Office), as the case may be, for possible issuance of a Preliminary Assessment Notice (“PAN”). It is only when the taxpayer fails to respond to the BIR’s request for a



conference that the docket is immediately endorsed to these offices for review and possible issuance of a formal deficiency tax assessment. Originally, the issuance of the NIC was provided for under RR No. 12-99. This step was, however, removed by RR No. 18-13. Upon the issuance of RR 7-18 this year, the issuance of the NIC is now restored to the tax audit process. Through the reinstatement of the NIC, taxpayers are once more afforded, pursuant to BIR Regulations, with an opportunity to explain their side to BIR examiners prior to the issuance of a formal assessment.

If you have any questions or require any additional information, please contact [Felix Sy](#) or [Lorybeth Baldrias](#) Serrano or the ZICO Law partner you usually deal with.

This alert is for general information only and is not a substitute for legal advice.

[1] RR No. 7-18, section 3.

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