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TAX LAW FOR BUSINESS

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Six-percent interest on deficiency tax

IT has been said that the imposition of interest on unpaid taxes is but a just compensation to the State for the delay in payment of taxes and for the concomitant use by the taxpayer of funds that rightfully should be in the government's hands. Thus, the Tax Code speaks of 20-percent interest for the delay in the payment of taxes.

Decisions involving assessment for unpaid taxes had consistently imposed a single 20-percent interest. And this was imposed only on the unpaid basic tax due. In recent years, however, the decisions of the Tax Court saw the emergence of a new computation of interest on unpaid taxes. There is now the imposition of two distinct interests—the 20- percent deficiency interest [Section 249(B)] and the 20-percent delinquency interest [Section 249(C)]. A review of some of the recent cases would show there are some variations on how these two distinct interests were imposed. But it seems that the trend is that the deficiency interest is to be computed from the date prescribed for the payment of the tax until its full payment. On the other hand, the delinquency interest is to be computed from the date of the Assessment Notice (AN) or the Final Decision on Disputed Assessment (FDDA), if one was issued, until its full payment.

With the imposition of both the deficiency and delinquency interests, these two 20-percent interests run simultaneously from the issuance of the AN or the FDDA up to the date of payment of the amounts due. This is not even a simple 40 percent of the basic tax due. Note that the delinquency interest is computed on the amounts due as computed in the AN or FDDA, which includes the basic tax, the surcharges and the interests computed in the AN/FDDA. In effect, the imposable interest is more than 40 percent of the basic tax. As a result, taxpayers may find themselves being required to pay for an immense amount of interest, which could increase exponentially or a hundredfold higher than the deficiency tax itself. One may think the imposition of interest is no longer compensatory but "penal" in character.

A recent decision of the Supreme Court (SC) (in GR 175651) may somehow provide relief to taxpayers. In this case, the taxpayer was issued FDDA, finding the taxpayer liable for basic deficiency taxes, plus surcharges and interest. When this was elevated to the Tax Court, the latter reduced the amount of basic taxes and, correspondingly, the amount of surcharges and interests were also reduced. In addition, however, the taxpayer was also ordered to pay a 20-percent "delinquency interest" per annum on the total reduced amount (inclusive of the surcharge and interest), which interest is to be computed from the date of the FDDA until full payment. The reduced amount of deficiency tax was affirmed by the SC. But, at the same time, it made modification on the imposable interest. The SC applied the legal interest of 6 percent per annum, reckoned from the finality of its decision until the taxpayer's full satisfaction of the amount.

In imposing the 6-percent legal interest, the SC cited previous decisions on the payment of legal interest. It was laid down in its previous rulings that "when the judgement of the court awarding a sum of money becomes final and executory, the rate of legal interest shall be 6 percent per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit".

It is not clear, however, whether the 6-percent legal interest is in lieu of the deficiency and delinquency interests or at least in lieu of the delinquency interest only. Or was the legal interest imposed on top of both the deficiency and delinquency interests. A reference to the facts of the case would indicate that what is being required to be paid by the taxpayer is the reduced amount per FDDA, which includes the deficiency interest computed up to the issuance of the FDDA and the 6-percent legal interest to be computed from the finality of the SC's decision until it is finally paid. The deficiency interest was computed only up to the issuance of the FDDA and the delinquency interest is taken out of the picture. Some would say the delinquency interest is still to be imposed from the date of the FDDA until the finality of the Court's decision. But whether this should be the case or not, there should be no simultaneous application of deficiency and delinquency interests.

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