TAX LAW FOR BUSINESS
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Retroactive revocation of BIR rulings

THE PEACe bond controversy is but a simple case of a Bureau of Internal Revenue (BIR) ruling applied retroactively. The catastrophic effect of revoking a BIR ruling and applying it retroactively is much displayed in this current controversy.

As in many instances in the past, when the BIR revokes, reverses or amends its own rulings, whether such revocation is applied prospectively or retroactively, the interest of taxpayers who relied in good faith on those rulings are greatly affected and prejudiced—more so when applied retroactively, considering that past transactions can no longer be undone. But for whatever reason, whether valid or not, the tendency of BIR commissioners in constantly revoking their own or their predecessors' rulings erodes the confidence, trust and reliance on the BIR, an institution whose very existence and success is dependent on the trust and confidence reposed on it by the taxpaying public.

Unquestionably, the BIR has the power to interpret the tax laws. This is done through the issuance of rules and for general compliance, and in the case of specific transactions, through the issuance of BIR rulings. BIR rulings are issued to taxpayers seeking definitive tax rules or clarificatory guidelines on the tax treatment of a specific transaction, thus, giving certainty of a stable outcome from such transaction. A BIR ruling gives comfort and protection from any tax exposure in the future. It is private in nature and is applicable only to the parties involved in the ruling, although, any principle applied to a ruling can be relied upon by others under a similar situation or transaction.

The role, therefore, of a BIR ruling is very important as it provides stability in business. Any revocation or change in the rule is very damaging, especially when a transaction is already done or when it involves a continuing contract that has already been entered into. Thus, a BIR ruling, which, in effect, is a contract between the BIR and the parties to the ruling should not be disturbed, absent compelling reasons to do so, such as in the case of bad faith or misrepresentation by the taxpayer.

As a general rule, the commissioner of the BIR is not bound by the interpretation made by his predecessors on existing tax laws. He can revoke, modify or alter a previous ruling issued by him or by his predecessors. But the rule requires that any revocation, modification or reversal of a ruling shall not be given a retroactive application if it is prejudicial to taxpayers. Section 246 of the Tax Code is clear. No revocation or alteration of a previous ruling shall be applied retroactively when it is prejudicial to taxpayers. Certainly, a revocation of an existing ruling will prejudice the person who sought the ruling and relied on the ruling.

The rule on nonretroactivity of a BIR ruling allows three exceptions: first, when taxpayer misstates or omits material facts; second, when facts as represented by the taxpayer are different from those upon which the ruling is based; and third, in case the taxpayer acted in bad faith.

Most of the rulings revoked in the past were due to misrepresentation of facts by the taxpayer as alleged by the BIR. But whether these allegations were proved to be true and that due process was extended to taxpayers charged with such allegations is something that has been overlooked. Due process includes the right to be informed of the charges against him and the chance to defend himself and present his side. The question then is—can the BIR revoke a ruling unilaterally without the observance of the requisite due process?

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