



**TAX LAW FOR BUSINESS**  
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## **TRO and PEACe Bonds**

IT is said that the judiciary is the weakest among the three co-equal branches of government. The legislative department has the power to craft laws and with it, the so-called power of the purse or the power to allocate the national budget; while the executive department has the power to execute laws and the control over spending the budget.

The judicial department, on the other hand, is only tasked to interpret what the law means; to say whether a law is properly crafted by the legislative and is correctly implemented by the executive. It does not have the power to make a law nor execute the same. Thus, if the judiciary's orders are not followed by the executive, it is helpless.

While the Filipino nation basks on the defiance by the secretary of justice on the temporary restraining order (TRO) issued by the Supreme Court (SC) against the right to travel of former President Arroyo, let us not forget that this is not the first time that the executive department has defied a TRO issued by the SC.

Just recently, the SC issued a TRO enjoining the implementation of BIR Ruling 370-2011 against the Poverty Eradication and Alleviation Certificate bonds (PEACe bonds) issued by the Bureau of Treasury subject to the condition that the 20-percent final withholding tax (FWT) on interest income therefrom shall be withheld by the petitioner banks and placed in escrow pending rendition of the petition. Despite the TRO, the Bureau of Treasury and the Bureau of Internal Revenue (BIR) still withheld the 20- percent FWT amounting to around P5 billion.

The banks argue that the BIR has already issued a ruling in 2001 saying that the PEACe bonds are not subject to the 20-percent FWT. There will be a violation of due process, impairment of contracts and deprivation of property rights if the said ruling is subsequently reversed. No less than the Tax Code provides that any revocation of the rulings promulgated by the commissioner shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers. The exceptions are the following: (a) where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by

the Bureau of Internal Revenue; (b) where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or (c) where the taxpayer acted in bad faith.

The BIR on the other hand argues that the facts it subsequently gathered were materially different from the facts on which the 2001 rulings were based. In other words, there was misrepresentation of the facts in the 2001 rulings, which is among the exceptions provided by law that is why the BIR is reversing the same.

In sum, the BIR contends that the PEACe bonds are deposit substitutes because contrary to what was represented, the PEACe bonds were offered to more than 20 individual or corporate lenders at any one time. This argument might not hold water though since the 2001 BIR ruling has already confirmed that the determination of the phrase “at any one time” for purposes of determining the “20 or more lenders” is determined at the time of original issuance. In other words, it is on the original issuance that the act of lending is done. During the time of the original issuance of the PEACe bonds, there was only one lender involved—RCBC Capital. It is at this time that the government should have withheld the tax, if there is any withholding that should have been done.

In its 2001 ruling, the BIR has also noted that among the features of the PEACe bonds is that they are “freely tradable and transferable.” Taking into consideration the nature of zero-coupon bonds, it is expected that the PEACe bonds will be traded in the secondary market.

It is also worth noting that the BIR is only taxing the final holders of the bonds. It must be emphasized that the PEACe bonds were floated in the secondary market for 10 long years and have passed on from one holder to another during those years. Why tax the final holders for the entire amount of the bond when they have only held the bond for one or two years?

Despite the TRO, the BIR has already declared the P5-billion FWT as part of its October 2011 collection. Will the Supreme Court cite the BIR officers in contempt and put them behind bars for not following its order? If it does, will the President defy the SC anew?

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