



Tax Law
for
Business

Rodel C. Unciano

*BDB Law's "Tax Law for Business" appears in the opinion section of **Business Mirror** every Thursday.*

The power of judicial review

OUR legal system is replete with jurisprudence defining the power of the courts to test the validity of legislative and administrative acts in light of their conformity with the Constitution. This is what is referred to as the power of judicial review. In an old case, the Supreme Court held that the power of judicial review is an essential component of a democratic government. This is not an assertion of superiority by the courts over the administrative department, but merely an expression of the supremacy of the Constitution.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights that are legally demandable and enforceable. Revenue Memorandum Circular (RMC) 65-2012, which was issued late last year, has become one of the most controversial issuances of the Bureau of Internal Revenue (BIR). The issuance of this circular resulted in the rise in association dues, prompting not a few condominium dwellers (and operators) to complain.

In retrospect, RMC 65-2012 led to the escalation of condominium living in the country as association dues and fees paid by members and tenants of condominium corporations were made part of the latter's gross income. As such, association dues are now subject to income tax, value-added tax (VAT) and applicable withholding taxes. Association dues have effectively increased as a result of the imposition of the 12-percent VAT. The BIR abandoned the previous interpretation that association dues are funds merely held by a condominium corporation.

Only recently, a Regional Trial Court in Makati City declared that RMC 65-2012 is not valid. In this case, the petitioner—a nonstock, nonprofit condominium corporation—essentially questioned the validity and constitutionality of RMC 65-2012, which the court found to be ripe for judicial determination. In assailing the circular, the petitioner averred that RMC 65-2012 was issued without due process of law. It is the petitioner’s contention that the operative mandate of the circular is unjust, oppressive and confiscatory. The respondent countered that the circular was issued merely to clarify and to restate the prevailing position and ruling of the BIR. According to the BIR, the circular was a mere interpretation of an existing law that was already in effect.

In finding that RMC 65-2012 is invalid, the court declared that the circular not merely interpreted or clarified the existing BIR ruling, but, in fact, introduced a new legislation under the mantle of the BIR commissioner’s quasilegislative authority. The court found that the circular did not only clarify an existing law, but also changed its import and created a new tax burden. Since the BIR, in passing RMC 65-2012, failed to accord the petitioner and similarly situated taxpayers due notice and opportunity to be heard before issuing the circular, the court found that the issuance of the circular was arbitrary and in violation of the due-process clause of the Constitution.

Earlier, the Supreme Court, in G.R. 188550, held that the BIR must not impose additional requirements that would negate the availment of reliefs provided under international agreements. This case involves a taxpayer whose right to preferential tax rates under a treaty was denied allegedly due to his failure to comply with the provisions of Revenue Memorandum Order (RMO) 1-2000, which requires that the availment of the tax-treaty relief shall be preceded by an application for it.

The High Court emphasized that the obligation to comply with a tax treaty must take precedence over RMO 1-2000. Taxpayers cannot be deprived of their entitlement to the benefit of a treaty for failure to comply with an administrative issuance requiring the prior application for tax-treaty relief. Our Constitution provides for adherence to the general principles of international law as part of the law of the land and adherence to the time-honored international principle of *pacta sunt servanda* (Latin for “agreements must be kept”), which demands the performance, in good faith, of treaty obligations on the part of the states that enter into the agreement.

The battle may still take quite a long time before these controversies are finally laid to rest, but at least for now, aggrieved taxpayers are assured that in this country, the judiciary still exists as the last bulwark of constitutional rights guaranteed by the Constitution.

The author is a senior associate of Du-Baladad and Associates Law Offices (BDB Law), a member-firm of World Tax Services (WTS) Alliance.

The article is for general information only and is neither intended nor should be construed as a substitute for tax, legal or financial advice on any specific matter. Applicability of this article to any actual or particular tax or legal issue should be supported by a professional study or advice. For comments or questions about the article, e-mail the author at rodel.unciano@bdblaw.com.ph or call 403-2001, local 140.