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TAX LAW FOR BUSINESS

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

How interest penalties will change under the tax reform

Nonpayment or deficiency in the payment of taxes would always give rise to the running of interests. This is so since taxes are liabilities of a taxpayer to the government, which, according to the Supreme Court, are burdens to be borne by citizens for the preservation of the nation's sovereignty, and to ensure revenue for the upkeep of security and defense forces and installation of public improvements, which are supposed to be provided by the government. Similar to a loan of money, unpaid taxes incur interests due to the time value of money: The value of money at present will be worth more in the future due to its potential earning capacity.

Under the current tax code, two types of interests are imposed: deficiency interests and delinquency interests. A 20-percent deficiency interest is imposed when there is any deficiency in the tax due, such as when a taxpayer pays P1,000,000 in income taxes for the year 2016, but is found out to be liable for P1,200,000. A 20-percent deficiency interest per annum will then be imposed on the deficiency of P200,000, which will begin to run from the date prescribed for payment until full payment thereof.

On the other hand, a 20-percent delinquency interest per annum is imposed when there is failure to pay, such as when you file a tax return but fail to pay the amount indicated therein, or when

you did not file any tax return at all when you should have done so, or when the Bureau of Internal Revenue (BIR) assesses you for taxes and issues a notice of assessment asking for payment. Such interests will run from the due date prescribed in the assessment notice until the full payment thereof. Thus, there will be a time when a taxpayer will be burdened by a massive 40-percent interest on unpaid taxes, which will run until full payment.

In our example, the deficiency interest will run from the date when the P200,000 deficiency should have been paid, which in this case is April 15. Thus, from such date, deficiency interests will begin to run and will continue to run until full payment. If, for example the BIR issues an assessment notice demanding payment on May 15, then delinquency interests will start to run from that date until full payment. At this point, the taxpayer will be subject to 40-percent interest per annum since both deficiency and delinquency interests are already imposed.

Clearly, the high interest rate and the overlapping application of the deficiency and delinquency interests are unreasonable, burdensome and confiscatory. How will the Tax Reform for Acceleration and Inclusion (TRAIN) change this?

TRAIN amends the tax code by changing the interest rate from 20 percent per annum to “double the legal interest rate for loans or forbearance of any money in the absence of an express stipulation as set by the Bangko Sentral ng Pilipinas [BSP].” In a circular issued by the BSP in 2013, the legal rate of interests for loans or forbearances of money, goods, or credit, and for judgment awards, has been lowered to 6 percent per annum, from 12 percent per annum. Thus, on January 1, 2018 when TRAIN takes effect, the interest rate for both deficiency and delinquency rate would be 12 percent per annum.

Further, TRAIN addresses the issue on the overlapping application of the deficiency and delinquency interest by stating that “in no case shall the deficiency and delinquency interest be imposed simultaneously.” This adopts the interpretation made by the Court of Tax Appeals (CTA) in one case (*Liquigaz Philippines v. Commissioner of Internal Revenue*, CTA EB 1117, September 21, 2015), where the Court held that the deficiency interest shall accrue from the date prescribed for its payment up to the deadline set by the BIR for payment of the assessed tax, while the delinquency interest shall run from the said deadline until the assessed tax is fully paid.

Though taxpayers are obligated to pay their taxes correctly and on time, we must keep in mind that we should not overburden them by making them responsible for interest at exorbitant rates, resulting in situations when the unpaid running interests are already more than double their actual tax liability. By introducing the above-discussed reforms to the interest penalties under the tax code, TRAIN is a step in the right direction.

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