

Headline	When interest becomes interesting		
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When interest becomes interesting

Which is better, to enforce strict rules or to have a more relaxed take on things? As a new dad, I have often been asked on how I intend to raise and discipline my child. My usual answer is simple – “I will not be a strict parent.” This is because modern studies show that overly strict parents have a higher risk of raising a child with delinquent behavior.

Now, let’s get down to business. For many years, harsh rules on the imposition of interest were enforced by tax authorities in case of non-payment or delayed payment of tax. The National Internal Revenue Code (NIRC) of 1997, as amended, mandates the imposition of two types of interest on any unpaid amount

TOP OF MIND



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of tax: deficiency interest and delinquency interest.

Section 249(B) of the NIRC imposes a 20 percent per annum deficiency interest for any unpaid deficiency tax due which is computed starting from the date prescribed for its payment until the full payment thereof.

Section 249(C) of the NIRC, on the other hand, imposes a 20 percent per annum delinquency interest on the following: (1) When a taxpayer filed a return, but failed to pay the tax due thereon; (2) When a taxpayer failed to pay tax due for which no return is required; or (3) When the Bureau of Internal Revenue (BIR) issued a notice and demand for the collection of unpaid tax. Delinquency interest is computed starting from the date indicated in the notice until the full payment thereof.

What makes it even harsher is the way that the NIRC is worded such that both deficiency interest and delinquency interest may simultaneously be imposed against an erring taxpayer.

To illustrate, let us assume that on April 15, 2015, ABC Co. timely filed its annual income tax return for taxable year 2014 and paid the tax due amounting to P500,000. However, on March 1, 2016, the BIR issued a final notice demanding payment of deficiency income tax for taxable year 2014 amounting to P100,000. The said final notice indicates that the deficiency tax, including penalty and interest, must be paid on or before April 15, 2016. Let us further assume that ABC Co. paid the deficiency tax due only on April 15, 2018.

Applying the interest penalty imposed under the NIRC, ABC Co. is required to pay deficiency interest amounting to P60,000 counting from April 15, 2015 until the date of payment on April 15, 2018. Moreover, since ABC Co. was not able to pay on the due date appearing in the final notice, ABC Co. is also required to pay delinquency interest amounting to P40,000 counting from April 15, 2016 to April 15, 2018. The total amount of interest – deficiency interest and delinquency interest – of P100,000 is in effect equal to the basic deficiency tax due of P100,000. In reality, there may even be instances when the interest penalty exceeds the basic deficiency tax due.

In other words, the entire amount of deficiency tax assessment could double in a span of three years due to oppressive

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interest rates and unjust overlapping imposition of both types of interest under the NIRC.

It may be argued that the rationale for this was to encourage taxpayers to pay the correct amount of taxes in a timely manner, as well as to compensate the government for the taxpayer's use of such funds beyond the date when the tax should have been paid to the government for its maintenance and in support of its activities.

Recently, it appears there has been a paradigm shift on the rates and the simultaneous imposition of deficiency and delinquency interest when Republic Act (RA) No. 10963 or the Tax Reform for Acceleration and Inclusion (TRAIN) law was passed and became effective on Jan. 1. Section 75 of RA No. 10963 amended Section 249 of the NIRC such that deficiency and delinquency interest rates are reduced 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 this connection, BSP Circular No. 799 fixes the legal interest rate at six percent per annum. Therefore, deficiency and delinquency interest rates are now set at 12 percent per annum. More importantly, Section 75 of RA No. 10963 also prohibits the simultaneous imposition of deficiency and delinquency interest.

To date, however, the BIR has not yet issued the necessary guidelines to implement the provisions of the TRAIN law on interest penalty. Thus, it remains to be seen as to how the BIR will respond to this. Nevertheless, for the purpose of comparison and illustration, using the previous example, it may be argued that the total deficiency and delinquency interest will only amount to P36,000 under RA No. 10963 as compared to P100,000 as computed using the previous law.

Interest penalty is generally imposed to recover the time value of money lost from the government due to unpaid taxes – that is, to compensate for the revenue that it should have already collected, but is actually collected at a later time. Thus, it appears that the previous interest rates and manner of imposition of deficiency interest and delinquency interest were confiscatory and oppressive.

The interesting question is: Will the relaxation of interest rates lead to a healthier compliance with the new tax rules, or will this give erring taxpayers another reason not to comply?

Hope springs eternal. May all the innovations intended by the TRAIN law, especially the reduction of deficiency and delinquency interest rates, lead to more compliant taxpayers.

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