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**Income-tax holiday: Delineating the jurisdictions of the BIR and BOI**

The word "holiday" connotes a break, leave or a day off. More often than not, it brings pleasant perceptions, especially when used in conjunction with "income tax". In the Philippines, an income-tax holiday (ITH) is basically a break from the payment of income tax levied by the national government for a certain period of time. It is a fiscal incentive given to an entity (also referred to as a "registered enterprise") that complies with the conditions required under Executive Order (EO) 226, otherwise known as the Omnibus Investments Code of 1987, and is given in relation to the entity's registered activities.

Under the aforementioned code, the Board of Investments (BOI) is the government body that has the primary responsibility of implementing the provisions of EO 226. On the other hand, the Bureau of Internal Revenue (BIR) is the government agency designated to levy, assess and collect income taxes for the national government under the National Internal Revenue Code of 1997 (Tax Code), as amended.

At the onset, an issue between the Tax Code and EO 226 seems to arise with regard to the determination of which government agency/body has the primary jurisdiction of determining the income-tax liability of a registered enterprise. Specifically, if a registered enterprise has a pending motion for reconsideration with the BOI over its previously denied income as part of its ITH

incentive, will such proceeding stay/suspend the proceedings before the Court of Tax Appeals with regard to an income-tax assessment against it?

The Court of Tax Appeals *En Banc*, in CTA EB 1498 (CTA Case 8545), held that there is no conflict between EO 266 and the Tax Code. The said case involves an assessment by the BIR for deficiency income taxes of a domestic corporation, which was registered with the BOI as an Operator of Tourist Accommodation Facilities. During the pendency of the case before the CTA-Division, the domestic corporation filed a manifestation and omnibus motion with a prayer for the suspension of the proceedings due to a pending motion for reconsideration with the BOI over its previously denied income as part of its ITH incentive. When it elevated the case before the CTA *En Banc*, it claimed that the BOI has the exclusive jurisdiction to rule on whether a particular source of revenue is part of the registered activity entitled to ITH incentive.

However, the CTA *En Banc* ruled against the domestic corporation and held that the BIR and BOI have their respective mandates. The BOI is mandated to promote and generate investments and improve the image of the Philippines as a viable investment destination, while the BIR is mandated to assess and collect all national internal revenue taxes, fees and charges. While the BOI has the power to decide controversies, it is limited to those concerning the implementation of EO 226, but with regard to the assessment and collection of the taxes, fees and charges, it is the BIR who was exclusively vested with the said directive.

The Court also pointed out that, in the letter decision issued by the BOI, it was categorically stated therein that the amount granted for the domestic corporation's income-tax exemption is subject to adjustment, if any, by the BIR.

Moreover, the proceedings before the BOI does not stay or suspend the conclusions reached by the BIR in its own proceedings, more so oust the CTA of jurisdiction. The CTA *En Banc* emphasized that a taxpayer claimant must prove the veracity of its claim independently in the proceedings before the BOI and the BIR because, while both offices perform analogous functions, the mandate of their respective offices are distinct from one another.

Thus, while the BOI has the authority to grant an income-tax holiday to a registered enterprise, it is not empowered to determine the tax liability of a registered enterprise. Such power remains with the BIR, the government agency with the exclusive jurisdiction of levying, assessing and collecting internal revenue taxes for the national government.

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