

Headline	After being passed into law, whats next for TRAIN?		
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# After being passed into law, what's next for TRAIN?

As we bid our farewell to 2017, the Philippines will welcome the New Year with a new Republic Act. The Tax Reform for Acceleration and Inclusion (TRAIN), otherwise known as RA 10963, is now officially a law after having been signed by President Duterte last Dec. 19, 2017. The TRAIN is the first package of the Comprehensive Tax Reform Program (CTRP) which seeks to correct a number of deficiencies in the tax system and make it simpler, fairer and more efficient.

It must be noted that the enactment of the bill into law does not halt the rule-making process. The law must be put into

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effect or, otherwise properly and effectively implemented to materialize its goal. In this connection, RA 10963 provides that the law shall take effect on Jan. 1, 2018, following its complete publication in the Official Gazette, or in at least one newspaper of general circulation. As for its effective implementation, the Secretary of Finance shall, upon the recommendation of the Com-

missioner of Internal Revenue, promulgate the necessary rules and regulations within thirty days from its effectivity.

In view, however, of the number of changes embodied in the TRAIN, issues on the timely issuance of the relevant implementing rules and regulations arise. There are concerns that implementing rules may not be available in time for taxpayers to effect proper compliance with the amended provisions of the Tax Code.

But does the absence of implementing rules mean that the implementation of the law will be temporarily set back? Is the effectivity of the law hinged upon the enactment of the relevant implementing rules?

In the case of *Securities and Exchange Commission v. Interport Resources Corp., et al.* (G.R. No. 135808, 6 October 2008), the Supreme Court reiterated the well-established doctrine that every law has in its favor the presumption of validity, and the mere absence of implementing rules cannot effectively invalidate provisions of a law. This is especially true if a reasonable construction of such law can be given to support its implementation. According to the Court, "if men of common sense and reason can devise and provide the means, and all the instrumentalities necessary for its execution are within the reach of those intrusted therewith, a law will not be declared inoperative and ineffectual." Further, in *People v. Rosenthal*, the Court ruled that the legislation should not be held invalid on the ground of uncertainty if the law is susceptible of any reasonable construction that will support and give it effect.

However, when the law is so vague as to fail to furnish sufficiently comprehensible standards, that "men of common intelligence must necessarily guess at its meaning and differ as to its application," the law must be considered void. Such kind of vagueness in the law is repugnant to the Constitution be-

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cause it violates due process for failure to accord persons fair notice of the conduct to avoid. Further, it leaves law enforcers unbridled discretion in carrying out the provisions of the law. Thus, the “void-for-vagueness” doctrine may be raised in such circumstances.

As applied to the TRAIN, RA 10963 will be deemed valid as long as reasonable construction of the same can effect its proper implementation. It is only when the provisions of the law are so vague as to prevent reasonable interpretation and application can the **void-for-vagueness** doctrine be invoked. Thus, the TRAIN shall continue to run even in the absence of an IRR. The new tax rates in the TRAIN law shall apply, and taxpayers are expected to comply with the new law and its provisions.

Be that as it may, it is inevitable that issues will be encountered by the taxpayers as they start to apply the amended law. This is especially pronounced in the absence of definite rules and regulations. One of the problems that may arise is that taxpayers using the electronic filing and payment system (eFPS) of the BIR may not be able to apply the new rates if the BIR will not be able to adjust the rates in the eFPS by time the TRAIN law takes effect. Although the taxpayer may consider filing manually using eBIR forms, under current regulations, filing manually when you are required to file through eFPS is tantamount to filing in the wrong venue, which would subject the taxpayer to penalties. On the other hand, if the taxpayer continues to file through the eFPS but using the old rates, there is a substantial risk that taxpayers may be subject to penalties because these rates are different from those prescribed by the amended law. The BIR should thus consider timely updating the rates in the eFPS, or provide sufficient clarifications to deal with issues of this nature.

For its part, we understand that the BIR has already created several task force groups in anticipation of and preparation of IRRs in view of the changes in the tax rates and other provisions of the existing Tax Code because of the enactment of the TRAIN law. Let’s just hope that relevant regulations will be promulgated in time for the filing of the January tax returns. For now, we can only seek guidance from current regulations as it is also possible that the BIR may retain the existing rules and procedures, especially where procedures will not be affected by the amendments to the law.

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