Blaney McMurtry LLP

PUBLICATION

Collecting Another Country's Taxes – Recent Experience in the Canada-U.S. Context

Date: December 2, 2019

Originally published by Ruchelman P.L.L.C. in Insights 6, no. 9 (2019).

INTRODUCTION

When asking a U.S. tax adviser to describe the "revenue rule," it would not be surprising for the adviser to say that it refers to formal guidance issued by the I.R.S. that can be relied on by other taxpayers as authority for a position taken in a tax return.

However, the term has a much different meaning in a cross-border context. As explained by one author:

The revenue rule, a common law doctrine with origins in the eighteenth century, is a battleground in the twenty-first century. . . . In its modern form the revenue rule generally allows courts to decline entertaining suits or enforcing foreign tax judgments or foreign revenue laws.[1]

In a U.S. Supreme Court case of this century, the revenue rule is described in the following language:

Since the late 19th and early 20th century, courts have treated the common-law revenue rule as a corollary of the rule that, as Chief Justice Marshall put it, '[t]he Courts of no country execute the penal laws of another.' . . . The rule against the enforcement of foreign penal statutes, in turn, tracked the common-law principle that crimes could only be prosecuted in the country in which they were committed. The basis for inferring the revenue rule from the rule against foreign penal enforcement was an analogy between foreign revenue laws and penal laws [citations omitted].[2]

The revenue rule can be overridden by treaty, and where it has, the U.S. and Canadian tax authorities have, in recent years, collected the taxes due in the other country.

This article will explore (i) the general development of the revenue rule, (ii) the applicable provisions of the Canada-U.S. Income Tax Treaty (the "Treaty") allowing for assistance in collection and exchanges of information, (iii) one U.S. wire fraud case, and (iv) several recent cases in the U.S. where taxpayers raised creative arguments to attack the validity of the Treaty provisions but to no avail.

To read the full article, click here or 'Download PDF' below.

---

[1] Mallinak, "The Revenue Rule: A Common Law Doctrine for the Twenty-First Century," 16 Duke J. Comp. & Int'l L. 79 (2006)).

[2] *Pasquantino v. U.S.*, 544 U.S. 349, 360 *et. seq,* (2005).