



Atty. Jared C. Vicencio

TAX LAW FOR BUSINESS

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Understanding tax evasion in the corporate setting

One of the more emphatic battlecries of the current administration is its drive against tax evasion. This particular trajectory may not be something new, given the relentless pursuit in which the previous administration embarked on. Albeit the approach of the two bears obvious differences, the thrust remains the same: go after tax evaders. In light of this recent turn of events, saying that there is a need to understand the crime of tax evasion may come off as an understatement.

Just as it is important to know what constitutes the crime of tax evasion, it is similarly vital to understand who may be held liable for the offense. Section 253 of the National Internal Revenue Code (NIRC) of 1997, as amended, lay down the general principles governing the law on tax evasion, including the persons who may be found responsible for the crime. Of particular interest is paragraph (d) of the said provision, holding responsible certain officers and employees of offending juridical entities. What makes this particular passage of law interesting is the way it is worded, along with the currently prevailing interpretation of the courts.

It reads: (d) In the case of associations, partnerships or corporations, the penalty shall be imposed on the partner, president general manager, branch manager, treasurer, officer in charge and the employees responsible for the violation.

The way the provision is written gives one the impression that the officers, as enumerated in it, are liable should a juridical entity be found in violation of the Tax Code, regardless of participation. Such an interpretation is not farfetched, given how the courts view the same. In the case of *Tan v. People of the Philippines* (CTA EB Crim. Case 022 & 023, November 14, 2014), the Court of Tax Appeals ruled that it was sufficient for the accused to occupy the office of president (one of the enumerated positions in Section 253[d]) to sustain his conviction. This is despite the fact that the prosecution failed to establish his collusion with the company employee directly responsible for the violation.

The decision is not, however, unanimous. Three of the nine justices dissented from the main opinion. Of note is the dissent penned by Presiding Justice Roman G. del Rosario, where he opined that it would be unfair to hold a person liable under Section 253(d) of the NIRC of 1997, as amended, solely on the basis of his or her position. The presiding justice emphasized the need for evidence linking the official to the punishable act.

It is important to note at this point that the prevailing doctrine is still the principle embodied in the main opinion, i.e., that it is sufficient that one occupies any of the positions as enumerated in Section 253(d) of the Tax Code as amended to be held liable for tax evasion. If there is anything to be learned from this decision, it is that officers of corporations, partnerships, or associations carry with them a burden of responsibility, which makes ensuring proper tax compliance all the more crucial.

The author is a junior associate of Du-Baladad and Associates Law Offices, a member-firm of World Tax Services Alliance.

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