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TAX LAW FOR BUSINESS

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Dissolution of a corporation

When the going gets tough, the tough gets going. Like in business, there are many challenges encountered along the way but the strong will keep moving. This does not mean, though, that those who choose to stop are weak; there are many reasons for closing business operation. In case of a corporation, this may result in dissolution. A corporation maybe dissolved either voluntarily or involuntarily.

There are three ways by which a corporation can be dissolved voluntarily. The most common method of voluntary dissolution is by shortening the corporate term through the amendment of the articles of incorporation. Other than that, if no creditors are affected, a corporation may be dissolved by filing an application for issuance of certificate of dissolution with the Securities and Exchange Commission (SEC). If creditors will be affected by the dissolution, a formal petition for dissolution must be filed with the SEC, with due notice and hearing. On the other hand, a corporation may also be involuntarily dissolved by the SEC upon filing of a verified complaint and after proper notice and hearing on grounds provided by existing laws, rules and regulations.

Regardless of the mode of dissolution, a corporation shall remain a body corporate for a limited purpose, despite the revocation of its license or termination of its corporate existence. Once dissolved, a corporation's existence continues only for purposes of liquidation and winding up of its affairs and can no longer conduct the usual business provided in its primary purpose. The Supreme Court defined the term "liquidation" as the process of settling the affairs of a corporation, which consists of adjusting the debts and claims, that is, collecting all that is due the corporation, the settlement and adjustment of claims against it and payment of its just debts. Winding up the affairs of the corporation means the collection of all assets, the payment of all its creditors and the distribution of the remaining assets, if any among the stockholders in accordance with their contracts, or if there be no special contract, on the basis of their respective interests *(Yu* v. *Yukayguan, et al., GR 177549, June 18, 2009).*

From a tax perspective, there are many considerations that a dissolving or dissolved corporation ought to be aware of. But for this issue, we will limit our discussion to the often forgotten requirement of filing short-period income tax return. The tax law requires that every corporation shall, within 30 days after the adoption by the corporation of a resolution or plan for its dissolution, or for the liquidation of the whole or any part of its capital stock, including a corporation which has been notified of possible involuntary dissolution by the SEC, or for its reorganization, render correct return to the commissioner.

Essentially, this imposes upon a dissolving or a dissolved corporation the obligation to submit a return to the BIR within 30 days from the adoption by the corporation of a resolution for its dissolution. Such return is usually referred to as a "final tax return" (since this should be the last income-tax return to be filed precisely because the corporation is dissolving). It is also often referred to as a "short period return" (because the taxable year is shortened as it covers only the period from the beginning of the taxable year up to the date of dissolution). There is no requirement to file the usual annual income-tax return.

The 30-day period for the filing of the short-period return has been interpreted to mean 30 days from the approval by the SEC of the dissolution. Thus, a dissolved corporation needs to file the final adjustment return within 30 days from the approval by the SEC of its dissolution. If, for some reason, the filing cannot be done within the period, the dissolved corporation may ask for an extension of time to file the income-tax return.

The nonfiling of this short-period return sometimes has negative repercussions. Dissolved corporation is actually allowed to file a refund claim for excess tax payments or withholding tax credits that remain unutilized as of the date of dissolution. A dissolved corporation is granted the opportunity to claim a refund of its excess creditable withholding taxes for previous years upon dissolution. But there were some instances where the refund claim of a dissolved corporation had been denied on the ground that the short-period return was not filed. According to the Courts, it is only the filing of the short-period return that the dissolved corporation will be able to ascertain whether a tax is still due, or a refund can be claimed. It is the filing of the short-period return, where it can be ascertained that the excess tax credits remain unutilized as of the date of dissolution, hence, the necessity of filing the short-period return.

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