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TAX LAW FOR BUSINESS

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Compromising tax liabilities

A tax compromise is an agreement whereby the taxpayer offers to pay something less than what is due and the government accepts it as a full settlement of his tax liability.

In compromise, there is meeting of the minds of the taxpayer and the government, lacking of which, there is no compromise to speak of. A compromise offer to pay P1.5 billion in settlement of a P30-billion tax liability, for example, remains to be an offer until accepted.

Since compromises effectively condones, waives the collection of taxes, or gives away revenues belonging to the government, any tax compromise not in accordance with the law is a ground for graft and corruption or even plunder.

But who can compromise tax liabilities? Under the law, only the commissioner of Internal Revenue can enter into tax compromises. He has the sole authority to compromise taxes and nobody else. Not the president. Not even the secretary of finance.

Notwithstanding the authority to compromise granted to the commissioner, in actual practice, applications for compromises undergo a very strict and rigid process involving many layers of technical evaluation and approval. It is a long and tedious process, understandably, because it involves giving away government funds.

What can be compromised? Liabilities arising from violations of the Tax Code are of two nature—the criminal liability and the civil liability. Most violations of the tax code carry with it a penalty for civil, as well as criminal liability.

The civil liability pertains to the unpaid taxes plus surcharges and penalties. The surcharge is a 25-percent penalty, or 50 percent in fraud cases, added to the tax unpaid. Interest penalty is at 20 percent per annum, and could run up to 40 percent per annum for delinquent accounts. The criminal liability, on the other hand, is imprisonment ranging from one year to 10 years.

The civil liability is separate and independent from the criminal liability. One is not dependent on the other. A conviction of one does not imply a conviction of the other, neither is the acquittal of one a bar to the filing of a case on the other.

Thus, when we talk of tax compromise, we talk of two separate liabilities to compromise. And these are governed by different rules.

As a general rule, the civil liability cannot be compromised. There are only two exceptions. First, when the assessment is considered to be of doubtful validity, in which case, the commissioner can compromise to not less than 40 percent of the basic tax. And second, when the taxpayer is financially incapable to pay the liability, in which case, it can be compromised to not less than 10 percent of the basic tax.

The law allows compromises lower- than-the-above rates but the approval of a collegial board called the National Evaluation Board composed of the four deputy commissioners and the commissioner is required. The same is true for all compromises, where the basic tax involved exceeds P1 million.

Examples of doubtful validity are jeopardy (or harassment) assessments issued without the benefit of audit, or arbitrary assessments issued without any factual and legal basis. Examples of financial incapacity, on the other hand, are bankruptcy or the business has ceased to operate, or when there is impairment of capital by at least 50 percent, or when the taxpayer has no other source of income.

The rule for the criminal aspect, on the other hand, is the reverse. The general rule is all criminal liabilities can be compromised. There are only two exceptions, i.e., first, when a case is already filed in court and, second, when the case involves fraudulent acts (Section 204, Tax Code).

Fraud is a willful intent to evade taxes. It consists of deception, intentional wrongdoing, willfully and deliberately done or resorted to in order to evade the payment of taxes. It is a frame of mind manifested by a series of actions leading to the evasion of taxes.

Considering that fraud is a serious crime, the proof needed to convict must be actual, beyond reasonable doubt, supported by clear and convincing evidence and is never presumed. Using fake stamps to evade the payment of excise taxes, if clearly proven, is a fraudulent act that is beyond the authority of the Bureau of Internal Revenue commissioner to compromise.

A mere signal to compromise a criminal liability for tax evasion will destroy order and discipline in the payment of taxes.

Thus, if an act constitutes a clear case of tax evasion, done willfully with intent to evade the payment of taxes, and the liability is clearly established, there is no room for tax compromise, both on the criminal aspect and the civil aspect. The taxpayer must be prosecuted and brought to court, and the amount due the government must be collected in full inclusive of penalties.

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