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# Liability for failure to withhold EWT by the government

The Philippine Constitution provides that public office is a public trust, thereby ensuring that public officers are constitutionally bound to carry out their duties while being bound by the strictest sense of scrutiny. This is considering that they are accountable to the people, commanded to serve with utmost responsibility, integrity, loyalty and efficiency. This constitutional dictate has been expounded upon in the recent decision of the Court of Tax Appeals (CTA) in CTA Case 8929.

In the said CTA case, the Commission on Elections (Comelec) was assessed for deficiency expanded withholding taxes (EWT) for its failure to withhold on its payments to suppliers, particularly involving its transactions for the automated elections. It was argued that though it was a withholding agent for EWT, it is not liable, since the nonwithholding related to the automated elections, which are tax-exempt under Republic Act (RA) 8436. It, likewise, argued that it should not be held liable for interests in addition to the basic tax due, as provided in Sections 247(b) and 249 of the 1997 Tax Code as amended. As a result, the CTA ruled that the Comelec is still a withholding agent for EWT, for which it may be held personally liable. The tax exemption granted to it under RA 9369 does not include an exemption from its duty to withhold taxes from its income payments to its suppliers. This being the case, the Comelec may be held liable for the deficiency EWT.

However, the CTA ruled that the Comelec may only be held liable for the basic tax due, and not for the interest imposed in addition to the basic EWT. Section 247 of the 1997 Tax Code provides that if the withholding agent is the government, then the employee responsible for withholding and remittance of the tax shall be personally liable for the additions to withholding taxes, which include deficiency and delinquency interests.

Despite the straightforward provisions of the law used in the decision, a question arises: Who is the "employee" responsible? Though the CTA stated that the Comelec's employee may be held liable for interests on nonwithheld EWT, it stopped short of determining who exactly that employee should be. The Comelec, just like any other government agency, is made up of different departments and offices, each with its own set of officers and employees. Should this responsible employee be the person directly in charge of paying the suppliers, or it may be the supervisor or director who authorized the payment? May the supervisor or director, likewise, be held liable for interests for nonwithholding if he or she merely signed off the payment due to "supervisor accountability?" Could such employee, likewise, be held liable beyond his or her tenure? Should such accountability, though specifically stated in the law, be extended beyond a government employee's term in office? Clearly, public office is a public trust. However, should the law be applied in such a manner as to create more responsibility than that which is necessary to carry out the duties of one's office?

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