Atty. Irwin C. Nidea Jr.

TAX LAW FOR BUSINESS

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Tax Amnesty of 2019

Amnesty is here. It has been a long wait by many who are hoping that by availing themselves of it, they will have a fresh start. Unfortunately, not everyone will have an opportunity to have a clean slate on their tax liabilities from 2017 and prior years, since some provisions of the amnesty law has been vetoed by the President. As a consequence, only the following persons will have the privilege to be forgiven for their tax sins:

Delinquent taxpayer who must pay 40 percent or 50 percent of the basic tax due—A delinquent taxpayer has a final and executory tax assessment that is due. He should pay 40 percent of the tax due to avail himself of the amnesty. What about those that are pending at the Court of Tax Appeals where the assessment is final but the right of the Bureau of Internal Revenue (BIR) to collect is being questioned? It is final but is not yet executory. Thus, he cannot avail himself of the tax amnesty as a delinquent taxpayer. But on tax cases that have become final and executory, by judgment of the court, the taxpayer must pay 50 percent of the basic tax due.

Taxpayers with pending criminal cases who must pay 60 percent of the basic tax due—This includes cases that are pending before the Department of Justice and the courts. Possible criminal liabilities will be extinguished upon payment of the amnesty tax.

Withholding Agents who withheld taxes but failed to remit the same must pay 100 percent of the basic tax assessed.

Estate Tax—A one-time declaration and settlement of estate taxes and properties that are in the name of prior decedents or donors whose estates remain unsettled has been vetoed by the President. Thus, a 6-percent estate amnesty tax must be paid in every succession transfer. For example, the taxpayer has to pay 6-percent estate amnesty tax to transfer his great grandfather's estate to his grandfather. The taxpayer has to pay another 6-percent estate amnesty tax to transfer his grandfather's estate to his father.

The President also vetoed the presumption of correctness of the estate tax amnesty returns. According to the President, the valuation of properties that will be transferred is a technical aspect that cannot be left to mere self-declaration. He also said that an erroneous valuation not only impacts the revenue for the current estate but will also carry over to the subsequent transfer of the property regardless if it will be through sale, donation or succession.

All others who are not enumerated above will have to wait for another amnesty law to pass. Why did the President veto the general amnesty law where taxpayers who are not delinquent or who do not have criminal cases will have the opportunity to have a clean slate with the BIR? Under the proposed law, a taxpayer will be granted a general amnesty for all his tax liabilities from year 2017 and prior years by paying 2 percent of his total assets or 5 percent of his total net worth. The President explained that the original objective of the general tax amnesty will not be achieved under the proposed law. He took exception to the failure of Congress to pass the waiver of bank secrecy law when a taxpayer avails himself of general tax amnesty. He said that this must be passed so that the country can comply with the international standards on exchange of information for tax purposes. Waiver of bank secrecy is a safeguard against those who abuse the amnesty by declaring an untruthful asset or net worth. He also cited the government's experience with the 2006 tax amnesty where it was proven that without the safeguard of the waiver of bank deposit, the objective of a general tax amnesty will not be achieved.

The President is not close to the idea that a general amnesty is passed as long as the waiver of bank secrecy for fraud is passed with it. It will be a long shot since the waiver of bank secrecy was already in the original proposal. It has been struck down by Congress.

Many have been disheartened with the veto of the general amnesty because it means that their sleepless nights in dealing with the BIR are not yet over. Taxpayers will have to dig into their files to defend themselves against tax assessments that may cover year 2017 and prior years.

Amnesty is not here for all.

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The author is a partner of Du-Baladad and Associates Law Offices (BDB Law), a member-firm of WTS Global.

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