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TAX LAW FOR BUSINESS
Atty. Deo D. Saludario

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Tax on generosity

Amid the countless parties, celebration and the horrendous traffic associated with this season, the spirit of Christmas is still about giving. Cliché as it may sound, the true meaning of Christmas is, indeed, in simple gestures of generosity and kindness. However, these acts of generosity or acts involving conveyances of property for altruistic reasons may have tax implications on the person giving or donating.

As one of the fundamental powers of a sovereign, the power to tax by the state may be exercised over a wide spectrum of activities, from ventures in trade or profession to acquisition and disposition of property. Transfers of property may be made through onerous contracts such as sale or barter; or may be as a result of someone's death (succession); or through donation. Every mode of transmitting the right over, or of the property itself, is subject to different tax treatments.

A gift is defined as a voluntary transfer of property by one to another without any consideration or compensation, therefore (*28 C.J. 620; Santos v. Robledo, 28 Phil. 250*). Under the 1997 Tax Code, the transfer of property by gift, whether it be real or personal, tangible or intangible, is subject to donor's tax. Donor's tax is a direct tax imposed upon the transfer by any person, resident or nonresident (donor), of a property by gift.

The rates applicable to donations vary depending on the recipient of the property donated (donee). Donations made to a person who is a) a brother, sister, spouse, ancestor and lineal descendant; or b) a relative by consanguinity in the collateral line within the fourth degree of relationship shall be subject to the schedular rates of donor's tax ranging from nothing to 15 percent on the net gifts made during the year.

On the other hand, gifts given to persons other than those enumerated above shall be considered as gifts made to strangers and shall be subject to 30-percent donor's tax. Donations made between business organizations or between an individual and a business entity shall be considered as donations made to a stranger and accordingly, subject to 30-percent donor's tax as well.

However, donations and contributions made in favor of nonstock, nonprofit corporations or nongovernment organizations, which are accredited by the Philippine Council for NGO Certification Inc. (PCNC) are exempt from donor's tax. A certificate of donation shall be required to be issued by these accredited entities on every donation or gift they receive.

Even though donations are made out of pure liberality on the part of the donor and without any valuable consideration, the taxpayer-donor may still derive benefit, tax-wise, from these acts of generosity, notwithstanding the imposition of donor's tax on such donations. The Tax Code provides that the donor-taxpayer may claim certain donations and contributions as deductions from its gross income for income-tax purposes, subject to conditions prescribed therein.

Under the Tax Code, donations made shall be deductible in full if made under the following conditions:

1. To the government exclusively to finance activities in education, health, youth and sports development, human settlements, science and culture, and economic development covered by the National Priority Plan determined by the National Economic and Development Authority.

2. To certain foreign institutions or international organizations, pursuant to international agreements or special laws.

3. To accredited nongovernment organizations, subject to certain requirements.

Otherwise, donations can be deductible only up to 10 percent (in the case of an individual) and 5 percent (in the case of a corporation) of the taxable income as computed, without the benefit of the deduction, if the donation is made to the government or any of its agencies for activities not included in the priority plan, an accredited domestic corporation or association, a social-welfare institution, or a nongovernment organization, no part of the net income of which inures to the benefit of any private stockholder or individual.

Lest taxation dampen the spirit of giving this season, it is still, without doubt, better to give than to receive. But with the tax implications on every donation, it may be best that our generosity be coupled with understanding of the tax consequences of our benevolent acts.

Happy holidays, everyone!

The author is a senior associate of Du-Baladad and Associates Law Offices (BDB Law). If you have any comments or questions concerning the article, you can e-mail the author at deo.saludario@bdblaw.com.ph or call 403-2001 local 320.