



TAX LAW FOR BUSINESS
Atty. Anthony G. Prestoza

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SC releases first conviction for tax evasion

A FEW days back, the Supreme Court, in its resolution, in the case of People of the Philippines v. Gloria V. Kintanar (GR 196340), affirmed the conviction of a taxpayer for tax evasion due to non-filing of income-tax return (ITR). The conviction carried with it the penalty of imprisonment ranging from one to two years for each act of nonfiling of tax returns, in this case, two years. This conviction may cause a chilling effect on those who are not compliant with their tax obligations and most especially to those operating outside the tax net.

The accused, Gloria Kintanar, was not able to satisfactorily convince the Court of Tax Appeals as well as the Supreme Court that she did not deliberately and willfully neglect to file her ITR. The anchor of her argument was that there was actually intent to file and pay. In fact, she entrusted the filing of the same to her husband who caused the filing of their joint ITRs through a hired accountant. She said that since there was an intent, it cannot be said that there was willful neglect to file her ITR. Both courts did not agree.

Section 255 of the Tax Code punishes every person required by the Tax Code to pay any tax, make a return, keep any record, or supply correct and accurate information, who willfully fails to pay such tax and make such return.

What is willful then?

The Court of Tax Appeals (CTA) full court (en banc) had the occasion to define what is willful. In resolving this Kintanar case, it reiterated that willful in tax crimes statutes, is a voluntary, intentional violation of a known legal duty and bad faith or bad purpose need not be shown. Thus, considering that the accused admitted before the CTA that she is aware that she is mandated by law to file her ITRs and is an experienced businesswoman, her omission was considered willful and is a clear violation of Section 255 of the Tax Code.

Applying the case principle as promulgated above, it is an essential element, therefore, in Section 255 of the Tax Code that a violator must be fully aware of his/her legal duty to file her income-tax return. Without which, it may be inferred that the crime cannot be consummated. However, is this not in contravention of the legal principle that “ignorance of the law excuses no one?” The law presumes that everybody know his/her tax obligations and duties. Is there really a need to prove that an accused is fully aware of her tax obligations?

Worth mentioning is the fact that accused tried to persuade the court that the omission was not “willful,” considering that she entrusted the filing to her husband who caused the filing through an accountant. The court believed that this did not relieve the accused from her criminal liability. As principal, she must assume responsibility over the acts of her accountant (Section 51 [F] of the NIRC of 1997). With this, it can be inferred from the decision of the courts that a principal cannot use as a shelter from any criminal liability the fact that she hired or appointed an individual to cause the filing of her ITR. Generally, as principals, they are bound by the acts or omissions of these hired accountant or duly authorized representatives except, of course, for exceptions as provided by law.

It is also worth mentioning that each act of nonfiling of a tax return is a separate offense and each is punishable as an act of tax evasion. Thus, the penalty attaches to every tax-evasion case, which can be as many as there are returns that are not filed.

As April 15 is fast approaching, we, as taxpayers, will again be preparing and filing our tax returns. We are free to engage the services of an accountant or appoint a duly authorized agent or representative to cause the filing of our ITRs. However, in doing so, we must ensure that these hired or duly authorized representatives file our tax returns correctly, on time and at the proper venue.

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The author is a senior associate of Du-Baladad and Associates Law Offices (BDB Law), a member-firm of World Tax Services (WTS) Alliance.

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