



Tax Law  
for  
Business

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## **Tax Amnesty**

This is the season for reflection, repentance and transformation. According to Pope Francis, Lent comes providentially to reawaken us, to shake us from our lethargy.

As we observe the holy week, it is worth remembering that Jesus forgave our sins and granted us eternal life. In the world of tax, forgiveness may likewise be extended to erring taxpayers. Notably, the Philippine Congress has the power to promulgate laws exonerating qualified taxpayers from their tax liabilities through a tax amnesty.

Tax amnesty aims to grant a general reprieve to tax evaders who wish to come clean by giving them an opportunity to straighten out their records. By definition, tax amnesty refers to the articulation of the absolute waiver by a sovereign of its right to collect taxes and power to impose penalties on persons or entities guilty of violating a tax law.

For example, Republic Act (RA) No. 9840 otherwise known as the Tax Amnesty Act of 2007 covered all national internal revenue taxes for the taxable year 2005 and prior years that have remained unpaid as of December 31, 2005.

Revenue Memorandum Circular (RMC) 19-2008 clarified that these national internal revenue taxes include (a) income tax; (b) VAT; (c) estate tax; (d) excise tax; (e) donor's tax; (f) documentary stamp tax; (g) capital gains tax; and (h) other percentage taxes.

Pursuant to Section 6 of the 2007 Tax Amnesty Law, those who availed themselves of the benefits of the law became "immune from the payment of taxes, as well as additions thereto, and the appurtenant civil, criminal or administrative penalties under the National Internal Revenue Code of 1997, as amended, arising from the failure to pay any and all internal revenue taxes for taxable year 2005 and prior years."

One interesting question relative to this is whether a taxpayer who availed of a tax amnesty while its tax assessment case is pending before the Supreme Court or before any lower court is immune from paying the deficiency taxes stated in the tax assessments of the CIR?,

The Supreme Court, in *G.R. No. 182399 dated March 12, 2014*, had occasion to rule in the affirmative. Taxpayers with pending tax cases are still qualified to avail themselves of the tax amnesty program. Both R.A. 9480 and DOF Order No. 29-07 are quite precise in declaring that “tax cases subject of final and executory judgment by the courts” are the ones excepted from the benefits of the law. The exception “issues and cases which were ruled by any court (even without finality) in favor of the BIR prior to amnesty availment of the taxpayer” provided under RMC 19-2008 is invalid, as the exception goes beyond the scope of the provisions of the 2007 Tax Amnesty Law.

Corollary thereto, amnesty taxpayers may immediately enjoy the privileges and immunities under the 2007 Tax Amnesty Law, as soon as they fulfill the suspensive conditions imposed therein. In availing themselves of the benefits of the tax amnesty program, taxpayers must first accomplish and file with the RDO or an authorized agent bank the following forms: (1) Notice of Availment of Tax Amnesty Form; (2) Tax Amnesty Return Form (BIR Form No. 2116); (3) Statement of Assets, Liabilities and Net worth (SALN) as of December 31, 2005; and (4) Tax Amnesty Payment Form (Acceptance of Payment Form or BIR Form No. 0617).

The taxpayers must then compute the amnesty tax due in accordance with the rates provided in Section 5 of the law, using as tax base their net worth as of 31 December 2005 as declared in their SALNs. The RDO shall only receive these documents after complete payment is made. It must be noted that the completion of these requirements “shall be deemed full compliance with the provisions of R.A. 9480.”

Apparently, the law intended the immediate enjoyment of the immunities and privileges of tax amnesty upon fulfillment of the requirements. Further, a reading of Sections 4 and 6 of the 2007 Tax Amnesty Law shows that Congress has adopted a “no questions asked” policy, so long as all the requirements of the law and the rules are satisfied.

To taxpayers similarly situated to that of the taxpayer in the abovesited case, please be guided accordingly.

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