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TAX LAW FOR BUSINESS

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A more fluent Donor's Tax under the TRAIN Law

The common *tao* would prefer a law stated in simple terms and provisions, rather than a statute cached in complex parlance. Scott Leigh opined that this human tendency can be explained by a term in psychology called "fluency", which means "the ease with which you process something". Provisions stated in terms that people already know and understand are more "fluent" than provisions stated using reasoning people can't follow or terms that people do not understand.

With the dawn of Tax Reform for Acceleration and Inclusion (TRAIN) Law, the provisions regarding Donor's Tax under the Tax Code became simpler and less arduous. The salient changes in the provisions on Donor's Tax are as follows: (1) the concept of "stranger" was removed; (2) the schedular rates were replaced by a uniform rate of six percent; (3) the inclusion of an annual exemption worth P250,000; (4) the addition of a presumption with regard to sale, exchange or other transfer of property made in the ordinary course of business; and (5) the removal of "dowries or gifts made on account of marriage" as part of those exempt gifts.

The TRAIN Law amended Section 99 of the Tax Code and removed the distinction between a "general taxpayer" and a stranger. It further provided for a uniform Donor's Tax rate of 6 percent computed on the basis of the total gifts in excess of P250,000 exempt gift made during the calendar year. This annual exemption amounting to P250,000 is a new item in the computation of the net taxable gifts for the calendar year. The TRAIN Law also removed, from the list of the exempt gifts made by a resident, the provision on “dowries or gifts made on account of marriage and before its celebration or within one year thereafter by parents to each of their legitimate, recognized natural or adopted children to the extent of the first P10,000.”

Interestingly, the TRAIN Law introduced a presumption with regard to “Transfers for Less Than Adequate and Full Consideration.” Section 100 of the Tax Code was amended to provide that “a sale, exchange or other transfer of property made in the ordinary course of business (a transaction that is a *bona fide*, at arm’s length and free from any donative intent), will be considered as made for an adequate and full consideration in money or money’s worth. This provision bolsters a taxpayer’s position to exclude from donor’s tax those transactions that were entered at arm’s length despite a disparity between the market value of the property and its transfer price/value.

With the introduction of these changes in the Tax Code, the provisions on Donor’s Tax have become more straightforward, less complicated and easier to follow. While there is no guarantee that a more fluent Tax Code will result in higher collection of taxes, let alone compliance from the taxpayers, our lawmakers have done a great job in titivating its provisions.

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