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TAX LAW FOR BUSINESS

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Death Taxes and Amnesty

IN this world nothing can be said to be certain, except death and taxes, so goes a famous passage from a letter written by Benjamin Franklin. And building on that, Will Rogers, an American actor also once said, the only difference between death and taxes is that death doesn't get worse every time Congress meets. Indeed, tax is as certain as death as, in many jurisdictions around the world, tax necessarily follows death. The obligation of paying taxes does not end with death. Rather, as inescapable as death, the burden of paying tax on the fortunes left behind by a deceased becomes an inevitable consequence.

Unlike death though, tax is a creation by the authorities imposed upon their unwilling subjects, and so with the tax imposed upon someone's death. Different imposing authorities define the tax associated with death in varying descriptions. Some call it the estate tax and others refer to it as the inheritance tax. Still others describe it as succession duty or death duty. Commonly and collectively, they are referred to as death taxes. This is a tax that is imposed on the gratuitous transfer of property to any person, usually the heirs, after a person dies.

While they are called death taxes and are often used interchangeably, these death-related taxes are actually not the same, especially with respect to the party liable for the tax and the taxable base. In general, an inheritance tax is imposed on the persons who receive a deceased person's property and based on the value of what they receive. It is normally the beneficiary who is responsible for the payment of the tax. An estate tax, on the other hand, is imposed on the right

to transfer a deceased person's assets to his heirs and usually based on the overall value of the estate. The estate is liable for the payment of this tax. The rules could vary in every jurisdiction.

In the Philippine setting, there had been changes in the rules related to the imposition of death taxes. Although inheritance tax is used interchangeably with estate tax, the latter is what the present laws impose. We no longer have the inheritance tax. By statute, an estate tax is a tax levied, assessed, collected and paid upon the transfer of the net estate of every decedent, whether resident or non-resident of the Philippines, and based on the value of the net estate. It is therefore imposed on the value of a decedent's net estate, regardless of who the beneficiaries are, with certain exclusions.

Previously, the estate-tax return was required to be filed within six months after death and the tax had to be paid upon the filing of the return. In many cases, the estate- tax return is not filed and the tax is not paid. This is so because of the lack of awareness on the part of the heirs/beneficiaries of such obligations or due to mere neglect. But the usual reason for the non-filing and payment of the tax was the very high tax rate. As a consequence, many registrable properties remain registered in the names of the deceased. Descendants often unknowingly realize the need for the payment of the tax when they need to transfer the property to themselves or to someone else. The merchantability of the property is often affected.

Contrary to the earlier citation implying that taxes get worse every time Congress meets, our legislature recently passed significant legislations that are beneficial to the estate and, in effect, to the beneficiaries. The first one is the TRAIN law, which fixed the estate tax at the rate of 6 percent of the value of the net estate. The tax is payable within one year from the decedent's death and may be paid in installment within two years should the available cash of the estate be insufficient. This change in the law should somehow awaken public consciousness and change the perception of the public toward estate-tax obligations.

Another significant recent legislation is the bill providing for tax amnesties, including amnesty on estate taxes. After the law is signed by the President, I enjoin every one with delinquent estate taxes to avail themselves of the amnesty. Aside from the elimination of penalties for nonpayment of the taxes at the time they became due, which could be a huge amount if the decedent died

decades ago, the actual tax payment could actually be reduced significantly. More important, after availment of the estate- tax amnesty, registrable properties can be registered under the names of the intended current owners. This will afford an opportunity to obtain clean title to a registrable property, and allow it to be freely transferrable.

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