

## **The Amnesty Law, after the President's line veto**

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The legislators got slapped on their faces again with the president's line veto of yet another significant component of his tax reform program. This is the second time the President exercised his veto power on a TRAIN bill as if saying 'don't mess with me on this tax reform'. The first veto was on tax privileges of regional headquarters and certain VAT exemptions.

The tax amnesty is PACKAGE 1B, an important component of the comprehensive tax reform program and is meant to supplement TRAIN 1. It is offered as an act of grace, a clemency for past wrongdoings as one transitions to a new beginning under a new and better, but harsher tax regime under TRAIN.

But behind that, the amnesty is a legitimate way to collect information of a taxpayer's belongings, beef up the government's databank and convert that data into a useful tool for referencing going forward. Now, the government knows you.

And that is the reason for the veto of the whole section on general amnesty by the President. There was no provision lifting the secrecy of bank deposit for those wanting to come clean and avail of the amnesty. The amnesty bill transmitted by the legislators to the President contained 3 parts – the estate tax amnesty, the general amnesty and the amnesty on delinquent accounts. Of these, the general amnesty was vetoed.

The government felt it was useless to offer a general amnesty, giving up public funds and depriving millions of Filipinos of public service, yet getting nothing in return. The president wanted a quid-pro-quo arrangement and not a one-sided amnesty. He wanted those bank accounts opened in exchange for giving that tax immunity. Fair deal?

As structured, the proposed general amnesty is wide in scope covering all kinds of taxes, light on the pocket for those with big tax exposures or doing business underground, and overly generous

with an all-encompassing grant of immunity in exchange for payment of either 2% of total assets or 5% of networth (as of December 2017), at the option of taxpayer.

And unlike previous amnesties with a contestability period, one -year at least, the proposed amnesty does not have one. Immunity attaches immediately upon payment of the amnesty tax and the amnesty return is given the presumption of correctness and validity once filed. Everything written in the amnesty return as self-declared by the taxpayer, no matter how erroneous or improbable, is to be taken as gospel truth by the government. The President had to exercise his veto power, isn't it?

So, what remains after the veto? It, still, is a good amnesty program covering estate tax and delinquent accounts.

### **The Estate Tax Amnesty**

The estate tax amnesty covers the estates of decedents who died on or before December 31, 2017 only. Not after. The amnesty rate is 6%, equal to the new estate tax rate under the TRAIN law. All penalties, surcharges and interest penalties, are condoned and it is computed at a straight 6% based on the decedent's net estate, meaning, gross estate less the allowed deductions.

Assets of the estate shall be valued at fair market value at the time of death of the decedent. Likewise, the rules then prevailing at the time of death of the decedent with respect to manner of computation shall apply. Not the TRAIN Law. For example, the increased amount of standard deduction from estate of 5 Million, and the deduction for family home of 10 Million shall not apply. The prevailing rules on deduction at the time of death applies. In short, other than the 6% rate, the more generous deductions under the TRAIN law shall not apply.

If partial payment of estate tax had been made before, the undeclared asset can be covered by amnesty at 6%. If the net estate (after deducting all the allowable deduction) is negative or that, the allowable deductions exceed the gross estate, the estate tax amnesty can still be availed by paying the minimum amount of 5,000 pesos.

If properties had been transferred in a series of mortis causa transfers, e.g. generation to generation, without the payment of estate tax, all estates of decedents through which the property passed, not just the last decedent, shall file an amnesty to get full immunity on those properties.

The provision requiring only the last decedent to file the amnesty has been vetoed by the President.

The estate tax amnesty can be availed within 2 years from the effectivity of the implementing rules and regulations. Upon full payment of the amount due, the estate tax amnesty shall be conclusively presumed as true, correct and final.

To facilitate the transfer of properties covered by amnesty, the BIR, in coordination with other regulatory agencies such as the Registry of Deeds perhaps, and the banks (for withdrawals), is mandated to set up a system enabling the transfers of the properties to the heirs.

### **The Tax Amnesty on Delinquent Accounts**

Delinquent accounts pertain to tax obligations, whether with or without assessments, that have become final, due and demandable. These are normally referred to as collectibles or receivables of the BIR such as those covered by collection notices, warrants of distrains and levy, garnishment of bank accounts and all other summary modes of collection.

Delinquent accounts are not the same as assessments. Assessments that are contested either administratively or with the courts within the time period allowed by law, and have not yet attained finality, are not delinquent accounts, hence, not covered by this amnesty.

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