

BDB Law Advisory Series of 2019

RE: Tax Amnesty of 2019

The President exercised his veto power in some of the provisions of the Tax Amnesty Act of 2019. With the veto, only the following remain qualified to avail of tax amnesty, within one year after the effectivity of the Implementing Rules and Regulations:

- a. A delinquent taxpayer who has a final and executory tax assessment that can no longer be appealed to the court by paying 40% of the basic tax due.
- b. A delinquent taxpayer whose tax case have become final and executory, by judgment of the court, by paying 50% of the basic tax due.

What about cases pending before the Court of Tax Appeals or the Supreme Court without a final judgement yet? These cases cannot be the subject of amnesty since these are not yet final and executory. Another question that may arise is, what about cases where the assessment has become final but the taxpayer is questioning the right of the BIR to collect, i.e., void assessment, prescription of collection? Since these cases are still pending in court, they may be considered final but they cannot be considered executory. Thus, these may not be the subject of amnesty. In other words, for tax cases to be qualified for amnesty, it must be both final and executory, as worded in the law.

- c. A taxpayer with pending criminal case by paying 60% of the basic tax due – This includes cases that are pending before the Department of Justice and the courts.
- d. Withholding Agents who withheld taxes but failed to remit the same by paying 100% of the basic tax assessed.
- e. Estate Tax – An estate tax amnesty by paying 6% of the fair market value of the decedent's estate at the time of death. The amnesty tax must be paid in every succession transfer, not just on the last decedent. For example, the taxpayer has to pay 6% estate amnesty tax to transfer his great grandfather's estate to his grandfather. The taxpayer has to pay another 6% estate amnesty tax to transfer his grandfather's estate to his father.

Vetoed Items:

- a. General Tax Amnesty - the Full Section on General tax amnesty has been vetoed by the President.

Rationale for the veto - the original objective of the general tax amnesty will not be achieved under the proposed law because of Congress' failure to pass an amnesty law that requires the waiver of bank secrecy law when a taxpayer avails of the general tax amnesty. Waiver of

bank secrecy is a safeguard against those who abuse the amnesty by declaring an untruthful asset or net worth.

b. The amnesty availed by the last decedent will cover all unpaid estate taxes of the previous decedents.

Rationale for the veto – To implement the one-time settlement across multiple estates would erode the expected revenue of the government.

c. The presumption of correctness of the estate tax amnesty returns.

Rationale for the veto - According to the President, the valuation of properties that will be transferred is a technical aspect that cannot be left to mere self-declaration. He also said that an erroneous valuation not only impacts the revenue for the current estate but will also carry-over to the subsequent transfer of the property regardless if it will be through sale, donation or succession.

Other features of the tax amnesty that remain:

- a. Confidentiality of Tax Amnesty Returns and SALN
- b. Penalties on exchange and unlawful divulgence of information
- c. Creation of Information Management System
- d. Creation of Congressional Oversight Committee