

A close-up photograph of a lit sparkler against a dark sky, with bright sparks radiating from the tip. The sparkler is positioned on the left side of the page, partially overlapping the header area.

Tax amnesty offers fresh start for all taxpayers

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2019. The start of a new year, the possible impetus to make happen the changes we want. And with the TRAIN happening just last year, how we handle taxes this year, moving forward, just may be the change we really want, and really need.

Package 1b of the government's comprehensive tax reform program involves tax amnesty. And if the latest version of the tax amnesty bill (bill) of both Houses of Congress is to be the law, then this would be a tax amnesty like no other. In describing the nature of a tax amnesty, the Supreme Court pronounced that a tax amnesty is a general pardon or the intentional overlooking by the State of its authority to impose penalties on persons otherwise guilty of violation of a tax law. It partakes of an absolute waiver by the government of its right to collect what is due it and to give tax evaders who wish to relent a chance to start with a clean slate. While the Supreme Court's description of taxpayers vis-à-vis tax amnesty specifically refers to tax evaders, the bill offers certain advantages applicable to both conscientious taxpayers (who may have made unintentional errors) and those who may have unintentionally not paid taxes. The bill specifies three types of tax amnesties, covering estate tax, general tax, and tax delinquencies.

So what would make this bill different from the last tax amnesties, Republic Acts (RAs) Nos. 9399 and 9480? The number of taxpayers that applied for amnesty then under these laws was a little above 26,000, against more than quadruple that number of registered businesses. Let us focus on the advantages, which lawmakers claim have made this bill more "pro-taxpayer". Note that there are still qualifications mentioned in the bill, which taxpayers should be aware of. The bill uses the terms "immunities and privileges" to refer to these benefits that will be made available to those who correctly apply for tax amnesty, as follows:

1. Coverage is the first difference. All three types of amnesties cover the taxable year 2017 and prior years (for estate taxes, deaths occurring on or prior to 31 December 2017). The taxpayer will be immune from the payment of all taxes, inclusive of any increments and additions, as well as the related civil, criminal and administrative cases. For tax delinquencies, these delinquencies will be considered as settled.

The last tax amnesty covered the taxable year 2005 and prior years, and more than 10 years have since passed. A considerable number of changes in the tax laws, inclusive of the TRAIN Law, may account for mistakes in the payment of taxes, not to mention taxable years currently subject to audit investigations (audits).

Note the other major difference in coverage, from previous amnesties, is the inclusion of withholding taxes (for general taxes) and even withholding taxes withheld by the withholding agents, but which taxes were not remitted to the Bureau of Internal Revenue (BIR), for tax delinquencies. Further, tax delinquencies, inclusive of pending criminal cases, may be subject to amnesty. Finally, the value-added tax (VAT) and excise taxes collected by the Bureau of Customs is likewise included in the amnesty.

2. The second difference would be the period in application, for estate taxes. Taxpayers will have two years from the effectivity of the bill's implementing rules and regulations (IRR) to apply. For general taxes and tax delinquencies, the period of application is one year. The previous amnesties allowed only a six-month period.

3. The amnesty rates. The bill allows a taxpayer to choose the applicable tax base and rate for general taxes. This may either be a tax rate based on the net worth of the taxpayer, like the previous amnesties, or a tax rate based on the total assets of the taxpayer.

4. For general taxes and tax delinquencies, immunity from further investigation of all taxes as the investigation relates to the taxes and years subject to amnesty.

While this was not specified in the previous tax amnesties, the BIR stopped ongoing audits for the taxable year 2005 and prior years for taxpayers which availed of the tax amnesty then. Clearly, ongoing audits of taxpayers for 2017 and prior years would likewise be terminated, if the taxpayer correctly applies for tax amnesty under the current bill.

While not likewise specified in the previous or the latest tax amnesties, an obvious consequence of having applied for tax amnesty then was the subsequent dismissal of deficiency tax assessments pending in courts for the covered taxable years. This should also apply under the current bill.

5. Presumption of correctness of all information given by the taxpayer for estate taxes and general taxes. Previously, any proceeding not initiated by the BIR, which might show that a taxpayer understated its tax amnesty base by 30%, would have effectively invalidated the tax amnesty application.

On the other hand, the bill does not mention any possible understatement of the tax amnesty base for estate taxes and general taxes. All information given by the taxpayer for amnesty shall be conclusively presumed as true, correct and final, and the tax amnesty application shall be deemed complete upon payment of the tax amnesty. In fact, the BIR will be required to issue a certificate of availment of tax amnesty within 15 calendar days from receipt of the tax amnesty documents.

Like the previous amnesties, an application for tax amnesty should have the effect of exempting the taxpayer from audit of its "open years", except in cases of claims for refund, tax credits, tax incentives and exemptions. Akin to the last amnesties, for general taxes, any information provided by a taxpayer shall be confidential in nature and shall not be used in any investigation or prosecution before any judicial, quasi-judicial and administrative bodies. However, the taxpayer may use this as a defense, whenever appropriate, in cases brought against the taxpayer

Given the list of immunities and privileges, taxpayers should carefully consider the option of tax amnesty. In the Government's bid to raise revenue and support all its projects for the Filipino people, it relies on the collection of taxes. It may be gainsaid that taxes are the lifeblood of the government. The government cannot function without taxes and we, the people, rely on our government to support and protect us. The tax amnesty to be provided is a great way to boost revenue of the government and an opportunity for taxpayers to comply with the correct payment of taxes without the fear of having to pay penalties and surcharges.

The amnesty may be the fresh start the taxpayers are looking for. The passage of this bill into law will be a great way to kick-off the year 2019.

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