

Tax Bulletin

Special Issue on the Tax Amnesty
Act of 2019: Granting relief to
estates and delinquent taxpayers



Highlights

On 14 February 2019, the President signed into law Republic Act No. 11213 or the Tax Amnesty Act of 2019. It became effective on 5 March 2019, 15 days after its complete publication in the Official Gazette on 18 February 2019.

The signed law took a substantial departure from the Congress-approved bill as the President, pursuant to his constitutionally-provided power to veto a particular item or items in a revenue bill, vetoed significant provisions of the bill.

The Congress-approved bill, which was submitted for the approval of the President, provided for three types of amnesty:

1. **Estate Tax Amnesty** - The estate tax amnesty aims to free up properties that are otherwise encumbered by estate tax liabilities and make them available for commercial activities. It covers estate taxes that have remained unpaid or have accrued as of 31 December 2017 and may be availed of by the payment of estate amnesty tax at the rate of 6% of the total net estate (if no estate tax return was filed) or net undeclared estate (if an estate tax return was previously filed).
2. **General Tax Amnesty** - The primary objective of the general tax amnesty is to provide a fresh start to all taxpayers as it covers all national internal revenue taxes including income tax, withholding tax, capital gains tax, donor's tax, value-added tax, other percentage taxes, excise tax and documentary stamp tax collected by the Bureau of Internal Revenue ("BIR"), and value-added tax and excise tax collected by the Bureau of Customs for taxable year 2017 and prior years. It may be availed of by the payment of an amnesty tax at the rate of 2% of total assets as of 31 December 2017 or 5% of net worth, at the option of the taxpayer.
3. **Amnesty on Delinquent Accounts** - The amnesty on delinquent accounts, which targets to clean the dockets of the tax authorities in addition to giving the taxpayers a fresh start, covers delinquencies and assessments that have become final and executory, both at the administrative and judicial levels, specific criminal cases pending with the Department of Justice or the courts for tax evasion and other criminal offenses under the National Internal Revenue Code. Interestingly, it may also be availed by withholding agents who withheld taxes but failed to remit the same to the BIR. The amnesty may be availed by the payment of an amnesty rate of 40%, 50%, 60% and 100%, respectively, of the basic tax assessed.

The President vetoed the following portions of the Congress-approved bill:

1. **The entire Title III of the bill which provides for the General Tax Amnesty -**

One of the innovations under the Congress-approved bill was the inclusion of a provision granting conclusive presumption of correctness of the Statement of Total Assets or the Statement of Assets, Liabilities and Networth ("STA/SALN"). This means that once the taxpayer files the amnesty tax return and the STA/SALN and pays the amnesty tax, the taxpayer will be immune from all assessments and the BIR can no longer question the declarations made by the taxpayer. This is a huge modification from the previous amnesty law, Republic Act No. 9480, which qualifies

the presumption of correctness when the amount of declared networth is understated to the extent of at least 30%, and provides for a one-year contestability period when the BIR may contest the truthfulness of the declaration.

In addition, some of the original provisions relating to lifting of the bank secrecy laws for fraud cases and the Automatic Exchange of Information, were removed from the Congress-approved bill.

With these considerations, the President in his veto message, believed that the general amnesty provisions were overgenerous and prone to abuse. He was of the view that without the provisions breaking down the walls of bank secrecy, setting the legal framework for the country's compliance with international standards on exchange of information for tax purposes, and safeguarding against those who may abuse the amnesty by declaring untruthful asset or net worth, the original objectives of the law will not be met.

2. One-time declaration and settlement of estate taxes on properties subject of multiple unsettled estates -

Cognizant of the fact that a lot of properties have passed on from estates to estates, Congress decided to include a provision that would make the amnesty simpler and easier to comply with. The Congress-approved bill provides that if the estate has properties which are still in the name of another decedent, the present holder, heirs, executors, or administrators shall only file one return and this would cover all the other prior transfers.

The President, invoking the rules of succession under the Civil Code of the Philippines on the transmission of property, rights, and obligations of decedents, believed that the estate tax amnesty should be applied at every stage of the transfer of property. He said that allowing the one-time declaration and settlement of estate taxes would erode the expected revenue of the government from the estate tax amnesty.

3. Presumption of correctness of the estate tax amnesty returns -

Similar to the absolute presumption under the General Tax Amnesty, the Congress-approved bill provided that the Estate Tax Amnesty Return shall be conclusively presumed as true, correct and final upon its filing.

The President believed that valuation of the properties cannot be left to mere self-declaration. The implementing agencies must be provided with a mechanism to correct apparent misinformation and misdeclaration made by the taxpayer as it will not only impact the revenue for the current estate but also to the subsequent transfer of the property.

Although the law is already effective, the Secretary of Finance, in coordination with the Commissioner of Internal Revenue, is required to promulgate and publish Implementing Rules and Regulations (IRR) to implement the provisions of the tax amnesty. As of this writing, the BIR has released the IRR for the Tax Amnesty on Delinquent Accounts (Revenue Regulations No. 4-2019) while a public hearing will be conducted by the BIR on 24 April 2019 for the draft IRR on Estate Tax Amnesty.

For taxpayers who have set their eyes on the general tax amnesty, there may still be hope. The President, in his veto message, has asked Congress to pass another general tax amnesty. This time, he relayed a clear message that this bill must have the proper safeguards and measures against tax evasion including the lifting of bank secrecy for fraud cases, the inclusion of automatic exchange of information, and other safeguards to ensure that the asset or net worth declarations are truthful. Pursuant to this call, Congressman Dakila Cua has filed House Bill No. 9153 (*An Act Enhancing Revenue Administration and Collection by Granting Amnesty on all Unpaid Impositions Levied by Government for Taxable Year 2017 and Prior Years, and for other Purposes*). This bill is yet to be calendared for first reading since session is adjourned until 20 May 2019. Until then, the fate of this bill remains to be seen and taxpayers may only hope that this bill will be passed, at the latest, on the last session day of the 17th Congress on 7 June 2019.

SGV | Assurance | Tax | Transactions | Advisory

About SGV & Co.

SGV is the largest professional services firm in the Philippines.

We provide assurance, tax, transaction and advisory services. In everything we do, we nurture leaders and enable businesses for a better Philippines.

This Purpose is our aspirational reason for being that ignites positive change and inclusive growth. Our insights and quality services help empower businesses and the economy, while simultaneously nurturing our people and strengthening our communities. All this leads to building a better Philippines, and a better working world. SGV & Co. is a member firm of Ernst & Young Global Limited.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients.

For more information about our organization, please visit ey.com/ph.

© 2019 SyCip Gorres Velayo & Co.
All Rights Reserved.
APAC No. 10000414
Expiry date: no expiry

SGV & Co. maintains offices in Makati, Cebu, Davao, Bacolod, Cagayan de Oro, Baguio, General Santos and Cavite.

For an electronic copy of the Tax Bulletin or for further information about Tax Services, please visit our website www.ey.com/ph

We welcome your comments, ideas and questions. Please contact:

Luis Jose P. Ferrer
Email: luis.jose.p.ferrer@ph.ey.com
Phone: (632) 894-8362

Fabian K. delos Santos
Email: fabian.k.delos.santos@ph.ey.com
Phone: (6382) 227-3070

Jules E. Riego
Email: jules.e.riego@ph.ey.com
Phone: (632) 894-8117

Maria Margarita D. Mallari-Acaban
Email: maria.margarita.d.mallari@ph.ey.com
Phone: (632) 994-8372

Victor C. De Dios
Email: victor.c.de.dios@ph.ey.com
Phone: (632) 891-0307 loc. 7929

Reynante M. Marcelo
Email: reynante.m.marcelo@ph.ey.com
Phone: (632) 894-8335 loc. 8335

This publication contains information in summary form and is therefore intended for general guidance only. It is not intended to be a substitute for detailed research or the exercise of professional judgment. Neither SGV & Co. nor any other member of the global Ernst & Young organization can accept any responsibility for loss occasioned to any person acting or refraining from action as a result of any material in this publication. On any specific matter, reference should be made to the appropriate advisor.