

Tax Implications of Republic Act No. 11213¹, as Implemented by the Bureau of Internal Revenue's Revenue Regulations Nos. 4-2019² and 6-2019^{3*}

A. FEATURES

Republic Act (RA) No. 11213, otherwise known as the “Tax Amnesty Act”, aims to enhance revenue administration and collection and make the country’s tax system more equitable by simplifying tax compliance requirements and by granting two types of amnesties, i.e., on estate tax and delinquency.

The grant of general amnesty⁴ under Sections 2(b), 3(d), 3(e) and the entire Title III of the Act; and certain provisions under the estate tax amnesty or part of Sections 6 and 7 of the said law which provided for the one-time declaration and settlement of estate taxes on properties subject to multiple unsettled estates, and the presumption of correctness of the estate tax amnesty returns, respectively, were vetoed by the President in passing RA 11213.⁵

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¹ Entitled, “An Act Enhancing Revenue Administration and Collection by Granting an Amnesty on All Unpaid Internal Revenue Taxes Imposed by the National Government for Taxable Year 2017 and Prior Years with Respect to Estate Tax, Other Internal Revenue Taxes, and Tax on Delinquencies, approved on February 14, 2019.

² Subject: Implementing Rules and Regulations of Republic Act No. 11213, Otherwise Known as the “Tax Amnesty Act”, Providing for the Guidelines on the Processing of Tax Amnesty Application on Tax Delinquencies. Issued on April 8, 2019.

³ Subject: Implementing the Provisions of Estate Tax Amnesty under Title II of Republic Act No. 11213, Otherwise Known as the “Tax Amnesty Act”. Issued on May 31, 2019.

⁴ Under Section 10 of RA 11213, the “General Tax Amnesty” shall cover all national internal revenue taxes such as, but not limited to, 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, including value-added tax and excise taxes collected by the Bureau of Customs for taxable year 2017 and prior years, with or without assessments duly issued therefor, that have remained unpaid: Provided, however, that the General Tax Amnesty hereby authorized and granted shall not cover persons or cases enumerated under Section 16 and Title IV of the Act.

⁵ Veto Message of President Rodrigo Duterte in signing into a law RA 11213 dated February 14, 2019.

The estate tax amnesty under Section 4, Title II of the Act covers the estate of decedents who died on or before December 31, 2017, with or without assessments duly issued therefor, whose estate taxes have remained unpaid or have accrued as of December 31, 2017, except those estate tax cases which have become final and executory and when the properties subject to amnesty are involved in cases pending in appropriate courts, as follows:

- a. Falling under the jurisdiction of the Presidential Commission on Good Government;
- b. Involving unexplained or unlawfully acquired wealth under RA 3019⁶, otherwise known as the “Anti-Graft and Corrupt Practices Act”, and RA 7080⁷, or an “Act Defining and Penalizing the Crime of Plunder”;
- c. Involving violations of RA 9160⁸, otherwise known as the “Anti-Money Laundering Act, as amended”;
- d. Involving tax evasion and other criminal offenses under Chapter II of Title X of the National Internal Revenue Code (NIRC) of 1997, as amended; and
- e. Involving felonies of frauds, illegal exactions and transactions, and malversation of public funds and property under Chapters III and IV of Title VII of the Revised Penal Code.

Section 5 of RA 11213 provides that except for the abovementioned cases, an estate may enjoy the immunities and privileges of the estate tax amnesty and pay an estate amnesty tax at the rate of 6% based on the decedent’s total net estate⁹ at the time of death; or based on the net undeclared estate¹⁰ if an estate tax return was previously filed with the Bureau of Internal Revenue (BIR). If, however, the allowable deductions applicable at the time of death of the decedent exceed the value of the gross estate, the heirs, executors, or administrators may avail of the amnesty and pay a minimum estate amnesty tax of P5,000. In return, taxpayers who have complied with all the conditions of the law shall be immune from the payment of all estate taxes, as well as increments and additions thereto, and from all appurtenant civil, criminal, and administrative cases and penalties under the NIRC of 1997, as amended.

⁶ Approved on August 17, 1960.

⁷ Approved on July 12, 1991.

⁸ Approved on September 29, 2001.

⁹ Net estate as defined under RR 6-2019 refers to the gross estate less all allowable deductions as provided under the NIRC of 1997, as amended, or the applicable estate tax law prevailing at the time of death of the decedent.

¹⁰ Defined under RR 6-2019 to refer to the difference between the total net estate valued at the time of death of the decedent and the net estate previously declared with the BIR. For purposes of the regulations, the net estate previously declared is presumed to have been reduced with all the allowable deductions; thus, only the share of the surviving spouse on the undeclared conjugal properties, if any, may be deducted from the undeclared estate.

Section 9 of the BIR Revenue Regulations (RR) No. 6-2019, which implements the estate tax amnesty provisions of RA 11213, provides that in availing the estate tax amnesty, an Estate Tax Amnesty Return (ETAR) shall be filed by the executor or administrator, legal heirs, transferees or beneficiaries within two years from the effectivity of the said Regulations, with the Revenue District Office (RDO) having jurisdiction over the last residence of the decedent. In the case of a nonresident decedent, with executor or administrator in the Philippines, the return shall be filed with the RDO where such executor/administrator is registered or if not yet registered, at the executor/administrator's legal residence. In the case of a nonresident decedent with no executor or administrator in the Philippines, the return shall be filed with RDO No. 39-South Quezon City. Notwithstanding the aforementioned provisions, the Regulations provide that the Commissioner of Internal Revenue (CIR) may exercise his power to allow a different venue/place for the filing of tax returns.

On the other hand, the tax amnesty on delinquencies under Section 17, Title IV of RA 11213 covers all national internal revenue taxes, such as but not limited to, income tax, withholding tax, capital gains tax, donor's tax, value-added tax (VAT), other percentage taxes, excise tax and documentary stamp tax collected by the BIR, including VAT and excise taxes collected by the Bureau of Customs (BOC) for taxable year 2017 and prior years. Table 1 presents the instances where the tax amnesty on delinquencies may be availed of and the corresponding rates as provided under Section 18 of RA 11213 and RR 4-2019, the guidelines implementing the tax amnesty on delinquency provisions of RA 11213:

Table 1

Cases	Rates and Base
a. Delinquent accounts and assessments which have become final and executory, including (1) delinquent tax account with application for compromise settlement either on the basis of: (a) doubtful validity of assessment; or (b) financial incapacity of the taxpayer, but the same was denied by the Regional Evaluation Board or the National Evaluation Board, as the case may be, on or before the effectivity of RR 4-2019; (2) delinquent withholding tax liabilities arising from non-withholding of tax; and (3) delinquent estate tax liabilities.	40% of the basic tax assessed
b. Tax cases subject of final and executory judgment by the Courts on or before the effectivity of RR 4-2019;	50% of the basic tax assessed
c. Pending criminal cases filed with the Department of Justice (DOJ)/Prosecutor's Office or the courts for tax evasion and other criminal offenses under Chapter II of Title X and Section 275 of the NIRC of 1997, as amended, with or without assessment duly issued; and	60% of the basic tax assessed
d. Withholding agents who withheld taxes but failed to remit the same to the BIR.	100% of the basic tax assessed ¹¹

¹¹ Section 4 of RR 4-2019 provides that the 100% tax amnesty rate shall apply in all cases of non-remittance of withholding taxes even if the same shall fall under the first three instances.

Any person who wishes to avail of the amnesty shall, within one year from the effectivity of RR 4-2019 or until December 31, 2020¹², file with the appropriate RDO which has jurisdiction over the residence or principal place of business of the taxpayer, a sworn tax amnesty on delinquency return accompanied with a Certificate of Tax Delinquencies/Tax Liabilities issued by concerned BIR offices. The payment of the amnesty tax shall be made at the time the return is filed.

Section 8 of RR 4-2019 further provides that the tax delinquency of those who availed of the tax amnesty on delinquencies shall, upon full compliance with all the conditions set forth under the Regulations shall be considered settled, and the criminal case in connection therewith and its corresponding civil or administrative case, if applicable, shall be terminated. The taxpayer shall also be immune from all suits or actions, including the payment of said delinquency or assessment, as well as additions thereto, and from all appurtenant civil, criminal and administrative cases, and penalties under the NIRC of 1997, as amended, as such relate to the internal revenue taxes for taxable years that are subject of the tax amnesty availed of.

Upon full compliance with all the conditions of the estate tax amnesty and tax amnesty on delinquencies and payment of the corresponding amnesty taxes, the tax amnesty granted under the law shall become final and irrevocable.

For the effective use of information declared or obtained from the Tax Amnesty Returns, the Department of Finance (DOF), in coordination with the BIR, Land Registration Authority (LRA), Department of Trade and Industry (DTI), Securities and Exchange Commission (SEC), Land Transportation Office (LTO), and other agencies concerned, shall institute an Information Management Program or an Information Management System (IMS) that complies with the provisions of RA 10173¹³, otherwise known as the “Data Privacy Act,” and such other law’s relating to confidentiality of information.

B. TAX IMPLICATIONS

Estate tax amnesty

The grant of estate tax amnesty will unlock assets still registered under unsettled estates so that these may be used for commercial or economic activities that would create investment, jobs, and taxable transactions. It should be mentioned that before the transfer

¹² Based on RR 4-2019, as amended, and further amended by RR 15-2020 which provides that the tax amnesty on delinquencies be availed until December 31, 2020 yet may be extended if the circumstances warrant an extension such as in case of country-wide economic or health reasons. Prior to this, RR 4-2019, was already amended by RRs 5-2020 and 11-2020 which provide for the effectivity of availment of tax amnesty on delinquencies until April 23, 2020 and extending it until June 22, 2020 pursuant to RA 11469, or the “Bayanihan to Heal as One Act”, respectively.

¹³ Entitled, “An Act Protecting Individual Personal Information in Information and Communications Systems in the Government and the Private Sector, Creating for This Purpose a National Privacy Commission, and for Other Purposes”, approved on August 15, 2012.

of properties from the decedent to the heirs, devices and legatees may be effectuated, the estate tax, among others, must be settled first. Hence, unless and until the applicable estate taxes have not been settled, the concerned properties will still be locked-up under the name of the decedents, thereby preventing full economic activity upon the property.

The estate tax amnesty will benefit those who have unsettled estate tax liability as they will only pay either the estate tax amnesty rate of 6% of the decedent's total net taxable estate, or the minimum amnesty tax of P5,000 in case there is negative net estate or when the amount of allowable deductions at the time of the death of the decedent exceed the gross estate. It is to be noted that the rate of the estate tax amnesty was pegged at 6% to complement the current simplified estate tax rate introduced under RA 10963¹⁴, or the "Tax Reform for Acceleration and Inclusion (TRAIN)" law. Under this law, the value of the net estate of a decedent shall be subject to an estate tax rate of 6% beginning January 1, 2018.

At present, for purposes of determining the estate tax, the estate tax return should be filed within one year from the decedent's death, unless a reasonable extension has been granted, in meritorious cases, by the CIR or any revenue officer authorized by him. The estate tax is generally payable at the time the return is filed by the executor, administrator or the heirs. However, when the CIR finds that the payment on the due date of the estate tax or of any part thereof would impose undue hardship upon the estate or any of the heirs, the CIR may extend the time for payment of the tax¹⁵. From the moment the taxpayer has become delinquent from the payment of estate tax, penalties, interests and surcharges will apply and will continue to accrue unless and until estate taxes has been paid. In addition to these, the taxpayer may also be held civilly, criminally or administratively liable. With the estate tax amnesty in place, all availers will be spared from all the penalties attendant to non-filing and consequently non-payment of estate taxes due. This is highly favorable to taxpayers because in certain cases, the penalties and surcharges exceed the basic estate tax liability.

Section 3 of RR 12-2018¹⁶ provides that it is a well-settled rule that estate taxation is governed by the law in force at the time of death of the decedent. The estate tax accrues as of the death of the decedent and the accrual of the tax is distinct from the obligation to pay the same. Upon the death of the decedent, succession takes place and the right of the State to tax the privilege to transmit the estate vests instantly upon death. Hence, for purposes of computing the estate tax amnesty for properties that have been

¹⁴ Entitled, "An Act Amending Sections 5, 6, 24, 25, 27, 31, 32, 33, 34, 51, 52, 56, 57, 58, 74, 79, 84, 86, 90, 91, 97, 99, 100, 101, 106, 107, 108, 109, 110, 112, 114, 116, 127, 128, 129, 145, 148, 149, 151, 155, 171, 174, 175, 177, 178, 179, 180, 181, 182, 183, 186, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 232, 236, 237, 249, 254, 264, 269, and 288; Creating New Sections 51-A, 148-A, 150-A, 150-B, 237-A, 264-A, 264-B, and 265-A; and Repealing Sections 35, 62, and 89; All Under Republic Act No. 8424, Otherwise Known as the National Internal Revenue Code of 1997, As Amended, and For Other Purposes", approved on December 19, 2017.

¹⁵ The extension shall not exceed five years in case the estate is settled through the courts, or two years in case the estate is settled extrajudicially.

¹⁶ Subject: Consolidated Revenue Regulations on Estate Tax and Donor's Tax Incorporating the Amendments Introduced by Republic Act No. 10963, Otherwise Known as the "Tax Reform for Acceleration and Inclusion (TRAIN) Law", issued on March 15, 2018.

a subject of multiple transfer *mortis causa*, the maximum amount of allowable deductions, if any, shall be the amounts allowed by the law at the time of death of the decedent. (See Table 2.)

This may pose difficulty to availers in terms of ascertaining the actual amount of deductions for purposes of computing the net estate, complying with substantiation requirements as well as valuation especially if the estate tax liability dates back several years ago and has been subjected to several transfers already. It is worthy to mention that the enrolled bill of the law initially allowed a one-time filing of estate tax return to those properties that have been a subject of multiple transfers. Albeit simpler, this provision was vetoed by the President because it did not conform to the principle of estate taxation which states that every death is a taxable transaction.

Table 2

Historical Development of Estate Taxation

Legal Basis	Effectivity Date	Rates	Ceilings on Deductions			
			Funeral Expenses	Family Home	Medical Expenses	Standard Deduction
Commonwealth Act No. 466	July 1, 1939	1% to 10% of taxable estate	Not to exceed 5% of gross estate	-	-	-
RA 579	Sept. 15, 1950	1% to 15% of net estate	Not to exceed 5% of gross estate	-	-	-
Presidential Decree No. 69	Jan. 1, 1973	3% to 60% of net estate	5% of gross estate but not to exceed P50,000	-	-	-
RA 7499	May 18, 1992	5% to 35%	Actual funeral expense, or 5% of gross estate, whichever is lower but not to exceed P100,000	Current fair market value, or zonal value, but not to exceed P1 million	-	-
RA 8424	Jan. 1, 1998	0 to 20% on the value of the net estate	Actual funeral expense, or 5% of gross estate, whichever is lower but not to exceed P200,000	Current fair market value but not to exceed P1 million	Not to exceed P500,000	P1 million

Legal Basis	Effectivity Date	Rates	Ceilings on Deductions			
			Funeral Expenses	Family Home	Medical Expenses	Standard Deduction
10963	Jan. 1, 2018	6% on the value of the net estate	-	Current fair market value but not to exceed P10 million	-	P5 million

Veto of the general tax amnesty

The entire Title III of RA 11213 was vetoed by the President pursuant to the powers granted to him by the Philippine Constitution. The reason for the veto was the lack of provisions institutionalizing the automatic exchange of information and breaking down the walls of bank secrecy for tax fraud cases purposes. These two provisions were initially part of the bills filed in Congress but was later deleted during the bicameral conference committee. The veto by the President means that except in cases covered by the estate tax amnesty and those expressly falling within the tax amnesty on delinquencies, any taxpayer, whether natural or juridical, with unpaid national internal revenue taxes, with or without assessment duly issued therefore, may no longer avail of the general tax amnesty.

Notwithstanding the foregoing, the grant of amnesty is essentially an act of generosity on the part of the government. It does not follow a specific rule as to what to condone and what not to condone. Hence, the veto of the general tax amnesty only shows how benevolent the government is in condoning a larger base of taxpayers.

Tax amnesty on delinquencies

The tax amnesty on delinquencies aims to unclog court dockets by giving errant taxpayers an opportunity to settle their tax liabilities free from any appurtenant civil, criminal and administrative cases, and from the payment of interests, penalties and surcharges arising from non-payment of taxes. Under this type of amnesty, the taxpayer will have to pay a certain percentage of the basic tax assessed, depending on the ground from which a taxpayer is said to be delinquent.

As defined in the law, the term “basic tax assessed” refers to the latest amount of tax assessment issued by the BIR against the taxpayer, exclusive of interest, penalties, and surcharges. However, under RR 4-2019, the term “basic tax assessed” was further defined as either: (a) tax due shown on the Assessment Notice, net of any basic tax paid prior to the effectivity of the regulations, exclusive of civil penalties; (b) the computed basic tax liabilities as shown in the criminal complaint filed by the BIR with the Department of Justice or Prosecutor’s Office or in the information filed in the courts for violation of tax laws and regulations; or (c) the basic tax liability as per the court’s final and executory decision.

Except for criminal cases pending with the DOJ and the courts, the cases covered under this type of amnesty are past beyond the assessment stage. This means that the taxpayer may have slept on his or her rights to avail of the remedies for an assessment, either administratively or judicially, or the case has been subject to a final and executory judgment by the court. The next step for the BIR would be to enforce collection of taxes, fees or charges, and any increment thereto resulting from delinquency within five years following the assessment, or 10 years in case of a false and fraudulent returns. The civil remedies for the collection of delinquent taxes include distraint of goods, chattels, or effects, and other personal property of whatever character, including stocks and other securities, debts, credits, bank accounts and interest in and rights to personal property, or by levy upon real property and interest in rights to real property, and by civil or criminal action (Section 205 of NIRC of 1997, as amended).

On general provisions

The establishment of an IMS will allow the DOF, in coordination with the BIR, LRA, DTI, SEC, LTO, and other agencies, to effectively use the information declared or obtained from the tax amnesty returns. Through the IMS, the nature and the kind of taxes condoned can be determined, and from such determination, it will be identified which type of taxes are taxpayers mostly delinquent in paying or settling. Such data which can be generated with the aid of an IMS are relevant to establish tax policy analysis framework for revenue considerations and to support in-depth analysis of the country's fiscal condition.

The provision on the penalty for unlawful divulgence of tax amnesty return and appurtenant documents under Section 25 of the law, will boost the confidence of the tax amnesty availers that any information that they will disclose in their submitted documents will be treated as a confidential matter. Hence, it is not remote that such safeguard could encourage availment of the tax amnesty program and will serve as an incentive to taxpayers to declare the correct and necessary data or information.

One of the advantages of granting tax amnesty is the generation of short-run revenues. In 2019, 14,122 taxpayers availed of tax amnesties under RA 11213. Most of the revenues that was generated from the Act came from the tax amnesty on delinquencies despite smaller number of availers.

The Tax Amnesty Act, if extended, aside from possibly generating more revenues that can be used by the government, can provide tax relief to the taxpayers and enough time to avail of the tax amnesties given this pandemic crisis.

