

MAP Position Paper on the Senate Bill on Tax Amnesty

6 February 2018

The **MANAGEMENT ASSOCIATION OF THE PHILIPPINES (MAP)** supports the initiatives to bring more people to the fold of compliance even as new legislations on tax reform usher in. A higher standard of governance, in both the private and the public sectors, in a reformed tax system will expand the collection base. It will also provide a level-playing field that will make the country more competitive in attracting new investments.

The MAP is thus supportive of a general tax amnesty program that is not only practical, but also encourages accountability and compliance going forward from all who avail.

We are pleased to provide our comments and suggestions to the Senate Bill on general tax amnesty.

- 1. The gross under-statement that makes the amnesty application invalid should refer to both the net worth and the gross assets.**

We agree that the Statement of Assets, Liabilities and Net Worth (SALN) filed shall enjoy the presumption of validity, except where there is evidence or indication of under-declaration by at least 30% of the amount of the net worth or assets. Section 4 as worded refers only to "amount of declared net worth is understated". The applicant may grossly under-declare its assets and liabilities and arrive at a declared net worth that by itself is not grossly understated. Those who grossly under-declare assets in the SALN show propensity of using the amnesty program for tax planning and are not expected to be compliant thereafter as they continue to hide assets.

- 2. The bank secrecy waiver should apply to those investigated for gross under-declaration but not to the rest.**

We agree that the availment of amnesty should be an exception to the Bank Secrecy Law. However, there should be no deemed waiver for those who enjoy the presumption of validity of declaration (i.e. no SALN under-declaration issues). Only the bank accounts of those being investigated for gross understatement of SALN filed should be accessed by the BIR. This will also assure that those who come clean will not be unduly investigated.

- 3. The amnesty tax rate should apply to net worth instead of total assets**

The amnesty tax rate should apply on the net worth arising from full declaration. Section 5 as worded refers to "total assets as of December 31, 2016 as declared in the SALN". Applicants should be allowed to deduct from their declared assets the liabilities that they can support. The BIR can issue rules on what documents should support liabilities in the SALN during the application process.

- 4. On withholding tax liabilities, exclude from the amnesty program only those that withheld tax but did not remit the same.**

A withholding tax liability can arise in two ways: (a) Failure to withhold, and (b) Failure to remit what was withheld. We submit that only the group guilty of the latter should be excluded from amnesty due to the severity of the breach of not remitting to the government money that it held in trust.

The group whose infraction is mere failure to withhold should not be excluded from amnesty. In other words, those that apply for amnesty should likewise be relieved of their liability from failure to withhold for the years validly applied for. Anyway, the income payee reports the amount received for income tax purposes and is not expected to claim a tax credit on amounts not withheld and not covered by a withholding tax certificate.

5. We support the exception from amnesty of those with tax-related criminal cases filed in court.

We believe that those with tax-related criminal cases pending in court should not be qualified for tax amnesty. However, those with tax fraud cases without a finding of probable cause and have not yet been filed in court should still be allowed to apply for amnesty. This is to recognize the fact that not all tax fraud cases are meritorious, and those without a finding yet of probable cause deserve the same opportunity as the rest of those who under-declared their net worth .

6. Preserve taxpayers' and applicants' right to privacy

(a) Section 13 is clearly a rider provision and a violation of the taxpayers' right to privacy as it requires the Commissioner of Internal Revenue to publish all taxpayers "gross income" in at least two newspapers of general circulation. This should not be allowed and should be deleted from the draft.

(b) Section 11 provides for an "information management program" under which information declared or obtainable in the Tax Amnesty returns and the SALN will be subjected to "effective use" by government agencies. The phrase "effective use" is vague enough to accommodate any form of use that may be susceptible to abuse. Hence, there is a need to define "effective use" that takes into account privacy of information obtained through the amnesty program.

(c) We suggest that it be expressly provided in the law that those availing of amnesty shall not be published or otherwise made publicly known by any government agency. This will provide encouragement and comfort to availers that they will not be the object of a shame campaign.

7. Give the BIR more time to validate gross under-statement

The BIR should be given more time to validate information or indication of gross under-statement in the SALN.

One year for this purpose may be too short for the BIR to complete its validation. We suggest the period of one year be extended to 18 months.

8. Clarify that estate tax shall be covered by another amnesty program

We also wish to take this opportunity to express support for an estate tax amnesty which we understand shall not be covered by the bill on general tax amnesty and shall be governed by a completely separate program and set of rules.

We trust that the Senate will find the foregoing comments helpful and that the same will be considered.