KEEPING A WATCHFUL EYE: THE UNSIGHTLY INTRODUCTION OF THE WILLFUL BLINDNESS DOCTRINE IN THE PHILIPPINE LEGAL LANDSCAPE*

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ABSTRACT

To merit a conviction in tax evasion cases, the prosecution must prove beyond reasonable doubt that a taxpayer willfully defeated his or her taxes. Proving the existence of willfulness is an arduous task since there is no fixed rule in determining the mental state of an accused. Thus, the Court of Tax Appeals introduced the willful blindness doctrine in order to substantiate the willful intent of an accused-taxpayer to cheat the government of its taxes. Under the doctrine, the prosecution does not need to prove actual or constructive knowledge of an incriminating fact before an accused may be convicted; it is enough that proof be adduced that the accused had a high possibility of knowledge of the incriminating fact. Effectively, by relying on this doctrine alone, the quantum of evidence required from the prosecution is not only altered but also reduced to proof within reasonable doubt. This Note discusses: (i) the current role of the willful blindness doctrine in tax evasion cases before the Court of Tax Appeals; (ii) the unconstitutionality of the doctrine and its contravention of the constitutional safeguards on the presumption of innocence, the right to due process, the principle of separation of powers, and the proscription against judicial legislation; (iii) the dissonance between the doctrine and the basic rules on evidence; and (iv) the premature application of the doctrine in the absence of any statute that permits its use.

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* *Cite as* Guian Carlo Pasion, *Keeping a Watchful Eye: The Unsightly Introduction of the Willful Blindness Doctrine in the Philippine Legal Landscape*, 95 PHIL. L.J. 456, [page cited, if applicable] (2022).

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INTRODUCTION

The most prominent icon of justice and the legal system is Lady Justice—blindfolded, with a set of scales in one hand and a sword in the other. The scales embody impartiality, with the objects therein referring to the weight of evidence presented during a judicial proceeding. The sword represents authority, which hints at the idea that justice should be swift and final.[1] When the evidence is laid onto the balance pans, Lady Justice must make a decision. The result will only favor one side and, naturally, tilt against the other.[2]

Evidence must be presented after a party-litigant makes an allegation and before the courts render a sound and impartial decision. In the Philippine jurisdiction, different standards of proof are used depending on the nature of each case. In administrative proceedings, mere substantial evidence is required.[3] In civil cases, a preponderance of evidence[4] suffices.[5] But most importantly, in criminal proceedings, the constitutional safeguard afforded to an accused requires nothing less than proof beyond reasonable doubt.[6] Evidence in criminal proceedings must overcome the presumption of innocence of an accused.[7] This has been consistent from earlier versions of the Constitution[8] to the 1987 Constitution.

While Philippine penal and remedial laws are clear when it comes to the protection of the accused, a new precept was introduced into domestic courts that utterly disregards the aforementioned constitutional rights, the basic rules on evidence, and the statutory element of malice required in penal offenses classified as *mala in se*.[9] On August 11, 2010, the Supreme Court, through a minute resolution,[10] affirmed the Court of Tax Appeals (CTA)

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[1] Brent Edwards, *Symbolism of Lady Justice*, ¶ 5, *at* https://www.theclassroom.com/symbolism-of-lady-justice-12080961.html (last modified December 2018).

[2] Bordas & Bordas, PLLC, *The History of Lady Justice and the Scales of Justice*, ¶ 4, *at* https://bordaslaw.com/blog/history-lady-jus22tice-and-scales-justice (last modified September 2020).

[3] RULES OF COURT, Rule 133, § 5.

[4] Rule 133, § 1.

[5] This applies save for allegations of fraud wherein clear and convincing evidence must be presented. Riguer v. Mateo, G.R. No. 222538, 828 SCRA 109, 119, June 21, 2017.

[6] RULES OF COURT, Rule 133, § 2.

[7] CONST. art. III, § 14(2).

[8] CONST. (1935), art. III, § 1(17); CONST. (1973), art. IV, § 19.

[9] Penal offenses are *mala in se* because malice or *dolo* is a necessary ingredient therefor. People v. Quijada, G.R. No. 115008-09, 259 SCRA 191, 228, July 24, 1996.

[10] People v. Kintanar, G.R. No. 196340 (Notice), Aug. 11, 2011.

when the latter introduced a new concept to the Philippine legal system: *the Willful Blindness Doctrine* ("the Doctrine").

By invoking this Doctrine, courts authorize themselves to substitute presumed knowledge for actual knowledge of criminal intent without the required level of evidence. In simple terms, if Lady Justice were to remove her blindfold and tilt the scales of justice to the side of the prosecution, the iconic symbol of impartiality would be replaced by prejudice and oppression.

It must be stressed that although a minute resolution dismissing a petition is considered a disposition on the merits of a case, it is not binding precedent. The ruling is only enforceable with respect to the same subject matter and the same issues concerning the same parties; in other words, it constitutes *res judicata.* Where other parties or another subject matter is involved, despite the original parties and issues being included, a minute resolution issued by the Supreme Court would not form part of jurisprudence.[11]

Nevertheless, the Supreme Court, in a plethora of cases, has given great weight to the findings and rulings of the CTA, the latter being a specialized appellate court.[12] The only exception that would allow the Supreme Court to reverse the findings of the CTA is if there is a showing that the decision is not supported by the required evidence or if the tax court has committed a gross error or abuse in its ruling. In the absence of these exceptional circumstances, a decision rendered by the CTA is given high regard and due respect.[13] Thus, if left unchecked, there is a great probability that the Doctrine, as introduced by the CTA, will find its way to the highest court of the land without much delay.

This Note argues that the application of the Doctrine in the Philippines violates the fundamental principles of the Constitution, the basic rules on evidence, and well-settled legal principles. The first part discusses the current legal landscape of tax evasion in the Philippines and in the United States. The second part analyzes the Doctrine, its current role in foreign tax cases, and CTA rulings that invoke it. The third part delves into the constitutionality and legality of the Doctrine in the Philippines. This Note

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[11] Phil. Health Care Providers, Inc. v. Comm'r. of Internal Revenue, G.R. No. 167330, 600 SCRA 413, 446-447, Sept. 18, 2009.

[12] Commissioner of Internal Revenue v. De La Salle U., Inc., G.R. No. 196596, 808 SCRA 156, 192, Nov. 9, 2016, *citing* Comm'r of Internal Revenue v. Asian Transmission Corp., G.R. No. 179617, 640 SCRA 189, 200, Jan. 19, 2011.

[13] Commissioner of Internal Revenue v. Toledo Power, Inc., G.R. No. 183880, 714 SCRA 276, 292, Jan. 20, 2014.

primarily seeks to determine whether the introduction of the Doctrine by the CTA is permitted by current Philippine laws. It attempts to harmonize the CTA rulings and US case law pertinent to willfulness, and it focuses exclusively on the criminal aspect of tax evasion.

A. Tax Evasion Laws and Penalties

The Philippine Tax Code ("Tax Code") has been revised twice in the past five years: first in 2017 pursuant to the Tax Reform for Acceleration and Inclusion Law,[14] and second in 2021 through the Corporate Recovery and Tax Incentives for Enterprises Act.[15] Prior to these amendments, the Tax Reform Act of 1997[16] was in effect for almost two decades. The pertinent provisions on tax evasion are generally covered by Sections 254, 255, and 257 of the Tax Code,[17] as follows:

> SEC. 254. Attempt to Evade or Defeat Tax. - *Any person who willfully attempts in any manner to evade or defeat any tax* imposed under this Code or the payment thereof shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine not less than Five hundred thousand pesos (P500,000) but not more than Ten million pesos (P10,000,000) and suffer imprisonment of not less than six (6) years but not more than Ten (10) years: Provided, That the conviction or acquittal obtained under this Section shall not be a bar to the filing of a civil suit for the collection of taxes.[18]
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> SEC. 255. Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation. - Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax, make a return, keep any record, or supply correct and accurate information, *who willfully fails to pay such tax, make such return, keep such record, or supply correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation*, at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.[19]
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[14] [Hereinafter "TRAIN Law"], Rep. Act No. 10963 (2018).

[15] [Hereinafter "CREATE Act"], Rep. Act No. 11534 (2021).

[16] Rep. Act No. 8424 (1997).

[17] This law was amended by the TRAIN Law and the CREATE Act.

[18] TAX CODE, § 254. (Emphasis supplied.)

[19] § 255. (Emphasis supplied.)

> SEC. 257. Penal Liability for Making False Entries, Records or Reports, or Using Falsified or Fake Accountable Forms. –
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> (A) Any financial officer or independent Certified Public Accountant engaged to examine and audit books of accounts of taxpayers under Section 232 (A) and any person under his direction who:
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> (1) *Willfully falsifies* any report or statement bearing on any examination or audit, or renders a report, including exhibits, statements, schedules or other forms of accountancy work which has not been verified by him personally or under his supervision or by a member of his firm or by a member of his staff in accordance with sound auditing practices; or
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> (B) Any person who:
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> (4) *Knowingly makes any false entry or enters any false or fictitious name* in the books of accounts or record mentioned in the preceding paragraphs; or
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> (8) *Willfully attempts in any manner to evade or defeat any tax* imposed under this Code, or *knowingly uses fake or falsified revenue official receipts, Letters of Authority, certificates authorizing registration, Tax Credit Certificates, Tax Debit Memoranda and other accountable forms* shall, upon conviction for each act or omission, be punished by a fine not less than Fifty thousand pesos (P50,000) but not more than One hundred thousand pesos (P100,000) and suffer imprisonment of not less than two (2) years but not more than six (6) years.[20]

The common element required in the above-mentioned provisions is "willfulness" or "knowledge" on the part of the taxpayer or his or her authorized certified public accountant (CPA) to evade or defeat taxes through unlawful means.

The same provisions were substantially maintained in the latter amendments, except for the increased amount of civil liability and criminal sanctions imposed on a convicted tax evader under the TRAIN Law. The fine

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[20] § 257. (Emphasis supplied.)

imposed was raised to "not less than [f]ive hundred thousand pesos (P500,000) but not more than [t]en million pesos (P10,000,000)[,]" and the penalty of imprisonment was likewise revised to "not less than six (6) years but not more than Ten (10) years."[21]

When the prosecution is unable to prove willfulness to evade or defeat the tax in dispute, the law nevertheless sanctions those who are negligent in filing and paying their internal revenue taxes through the imposition of civil penalties: 25% for simple neglect, a considerably lesser sanction than the 50% surcharge on willful or fraudulent neglect.[22]

The elements required to establish that a taxpayer is defeating or evading taxes are provided in *CIR v. Estate of Toda, Jr.*[23] These elements are:

> (1) [T]he end to be achieved, i.e., the payment of less than that known by the taxpayer to be legally due, or the non-payment of tax when it is shown that a tax is due;
> (2) *[A]n accompanying state of mind[,] which is described as being "evil," in "bad faith," "willful," or "deliberate and not accidental"*; and
> (3) [A] course of action or failure of action which is unlawful."[24]

In *Ungab v. Cusi*,[25] the Supreme Court established that in a criminal proceeding for tax evasion, the prior tax assessment issued by the taxing authority is immaterial for conviction. In essence, the crime is complete when the violator knowingly and willfully files fraudulent returns with intent to evade and defeat a part or all of the tax.[26]

To further emphasize the necessity of proving willfulness in tax evasion cases, the Anti-Money Laundering Act (AMLA), in its most recent revision, explicitly requires a finding of fraud or willfulness on the part of the taxpayer. The enactment of RA 11521 effectively included tax crimes in the list of unlawful activities covered by the AMLA, taken in relation to Section 254 of the Tax Code.[27] RA 11521 provides:

> "SEC. 3. Definitions. — For purposes of this Act, the following terms are hereby defined as follows:

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[21] Rep. Act No. 10963 (2018), § 254.

[22] TAX CODE, § 248.

[23] G.R. No. 147188, 438 SCRA 290, Sept. 14, 2004.

[24] *Id.* at 299. (Emphasis supplied.)

[25] G.R. No. 41919, 97 SCRA 877, May 30, 1980.

[26] *Id.* at 884, *citing* Guzik v. United States, 54 F.2d 618 (7th Cir. 1931) & 10 JACOB MERTENS, MERTENS LAW OF FEDERAL INCOME TAXATION 21 (1986).

[27] TAX CODE, § 254.

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> "(i) 'Unlawful activity' refers to any act or omission or series or combination thereof involving or having relation to the following:
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> "(35) Violations of Section 254 of Chapter II, Title X of the National Internal Revenue Code of 1997, as amended, where the deficiency basic tax due in the final assessment is in excess of Twenty-five million pesos (P25,000,000.00) per taxable year, for each tax type covered and there has been a finding of probable cause by the competent authority: *PROVIDED, FURTHER, That there must be a finding of fraud, willful misrepresentation or malicious intent on the part of the taxpayer:* Provided, finally, That in no case shall the AMLC institute forfeiture proceedings to recover monetary instruments, property or proceeds representing, involving, or relating to a tax crime, if the same has already been recovered or collected by the Bureau of Internal Revenue (BIR) in a separate proceeding [. . .]"[28]

The Anti-Money Laundering Council has determined, in its Second National Risk Assessment on Money Laundering and Terrorist Financing, that the threat of tax evasion to money laundering is high.[29] As provided in the Tax Code and in the AMLA, willfulness is an essential element for an offense to fall under the definition of "tax crimes."

I. THE WILLFUL BLINDNESS DOCTRINE

A. Willfulness, defined

The definition of willfulness is not expressly provided in any Philippine statute. However, the Supreme Court, in a handful of cases, has consistently made reference to BLACK'S LEGAL DICTIONARY. In *Tiu v. NLRC*,[30] a willful act was defined as one "[d]one intentionally, knowingly, and purposely, without justifiable excuse, as distinguished from an act done

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[28] Rep. Act No. 11521 (2021), § 3. (Emphasis supplied.)

[29] Anti-Money Laundering Council, *The Philippines' Second National Risk Assessment on Money Laundering and Terrorist Financing, available at* http://www.amlc.gov.ph/images/PDFs/NRAReport20152016.pdf (last accessed Nov. 14, 2021).

[30] G.R. No. 83433, 215 SCRA 540, Nov. 12, 1992.

carelessly, thoughtlessly, heedlessly or inadvertently."[31] In *Antonio v. Manahan*,[32] the Court defined a willful act as "[o]ne governed by will without yielding to reason or without regard to reason."[33] It is a voluntary and intentional act.[34]

B. Willful Blindness Doctrine, defined

The Doctrine is denoted by foreign courts as "deliberate ignorance,"[35] "willful ignorance,"[36] "conscious avoidance,"[37] and other terms that imply a conscious avoidance of the fact that a criminal offense has been, or is being, committed. In BLACK'S LEGAL DICTIONARY, willful blindness is defined as follows:

> Deliberate avoidance of knowledge of a crime, esp. by failing to make a reasonable inquiry about suspected wrongdoing despite being aware that it is highly probable. A person acts with willful blindness, for example, by deliberately refusing to look inside an unmarked package after being paid by a known drug dealer to deliver it. Willful blindness creates an inference of knowledge of the crime in question.[38]

This principle is commonly used in US criminal cases where one of the elements of the offense is actual knowledge of an incriminating fact. The Doctrine is invoked when the prosecution fails to establish actual knowledge as an essential element of a penal offense. In this instance, the court instructs the jury to determine if there is a high probability that the accused had knowledge of an incriminating fact based on the evidence on record. If the jury is convinced that the accused had a high probability of knowledge of the illegal act, it may decide to convict.[39]

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[31] *Id.* at 547, *citing* BLACK'S LAW DICTIONARY 1434 (1979 ed.).

[32] G.R. No. 176091, 656 SCRA 190, Aug. 24, 2011.

[33] *Id.* at 200, citing Sta. Ana v. Sps. Carpo, G.R. No. 164340, 572 SCRA 463, 485, Nov. 28, 2008.

[34] Josefina M. Ongcuangco Trading Corp. v. Pinlac, A.M. No. RTJ-14-2402, 755 SCRA 478, 490, Apr. 15, 2015, *citing* BLACK'S LAW DICTIONARY 1630 (2004 ed.).

[35] Ira Robbins, *The Ostrich Instruction: Deliberate Ignorance as a Criminal Mens Rea*, 813 J. CRIM. L. & CRIMINOLOGY 191, 191 n.3 (1990).

[36] Robin Charlow, *Wilful Ignorance and Criminal Culpability*, 70 TEX. L. REV. 1351 (1992).

[37] Benita Berkowitz, *Conscious Avoidance of Knowledge: A Balanced Jury Charge Reinforces the Subjective Standard*, 45 BROOK L. REV. 1083, 1083 (1979).

[38] *Willful blindness,* BLACK'S LAW DICTIONARY 1737 (2009 ed.).

[39] *See* Robbins, *supra* note 36, at 194.

C. U.S. Origins and Application

The Doctrine originated from the landmark case of *United States v. Jewell*,[40] a drug possession and importation case. The defendant in *Jewell* was convicted of "knowingly" possessing marijuana after he drove a vehicle with the drug hidden in a secret compartment. While the drug was concealed, the defendant drove across borders. In his defense, the defendant denied that he "knowingly" transported marijuana across the border. The U.S. Court of Appeals ruled that the defendant could be convicted of possessing the drug even if he was not actually aware that it was in the car, as long as he had consciously avoided the truth.[41]

Nearly two decades later, the U.S. Supreme Court applied the same doctrine in *Cheek v. United States*,[42] a tax evasion case. The accused in *Cheek* initially filed his income taxes religiously. However, after being advised that income taxes are unconstitutional, he discontinued filing his tax returns. In his defense, the accused claimed that he did not 'willfully' evade his taxes since he had a sincere belief that: (1) the mandate of filing his tax returns was unconstitutional; (2) wages were not income; and (3) he was not a 'person' as defined in the tax law. On appeal, the U.S. Supreme Court ruled that in order for the accused to be convicted on his "willful" intent to evade taxes, it must be shown that there was a voluntary and intentional violation of a known duty. In the same decision, the Court noted that the U.S. Internal Revenue Code is ambiguous on the matter, and if there is a showing that a taxpayer, in good faith, misunderstood any of its provisions, there is no "willfulness" in evading his tax obligations.[43]

In *Fiore v. Commissioner of Internal Revenue*,[44] the defendant was a well-known tax lawyer who was charged with tax evasion for the years 1996 to 1999. He pled guilty to the crime charged for tax year 1999. He also admitted the fraud penalty for tax years 1998 and 1999, yet contested the same charge for tax years 1996 and 1997. The U.S. Tax Court rendered a decision against the defendant. Apart from the fact that he had an impressive accounting and tax background, the court applied the Doctrine and cited three elements thereof from *Jewell*. It said:

> On appeal, Jewell argued that positive knowledge of the hidden marijuana was necessary to convict him. The Ninth Circuit affirmed

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[40] [Hereinafter "*Jewell*"], 532 F.2d 697 (9th Cir. 1976).

[41] *Id.*

[42] [Hereinafter "*Cheek*"], 498 US 192 (1991).

[43] *Id.*

[44] [Hereinafter "*Fiore*"], T.C. Memo. 2013-21 (USTC 2013)

> the trial court, adopting the Model Penal Code definition of "knowingly". The court also noted that, "the required state of mind differs from positive knowledge only so far as necessary to encompass a calculated effort to avoid the sanctions of the statute while violating its substance.
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> Later cases listed three elements for willful blindness:
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> - awareness of a high probability of criminal circumstances,
> - deliberate avoidance of steps to confirm these criminal circumstances and
> - the deliberate avoidance be motivated by a desire to avoid criminal responsibility.
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> [S]ince the beyond-a-reasonable-doubt standard of criminal law is more stringent than the Commissioner's clear-and-convincing burden for finding civil fraud, we think meeting the criminal standard is more than sufficient to show the fraudulent intent behind false statements on tax returns that we're looking for here. We therefore hold that the Commissioner can meet his burden of showing fraudulent intent to evade taxes with clear and convincing evidence that a taxpayer was:
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> - aware of a high probability of unreported income or improper deductions, and
> - deliberately avoided steps to confirm this awareness.
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> There is clear and convincing evidence that Fiore was aware of a high probability of unreported income for 1996 and 1997. Notwithstanding his busy schedule and administrative shortcomings, he must have known that there was a very high probability that he wasn't reporting all of his income. His educational background and work experience would alert him to the likely outcome of his haphazard income-estimation method–that he was likely failing to report substantial amounts of income. Fiore knew he was neglecting firm administration and running a high risk of not reporting taxable income.[45]

It must be noted that in *Fiore*, the main defense of the accused was that he was only guilty of being "a horrible recordkeeper" despite his solid

[45] *Id.*

accounting background. Further, the taxing authority discovered that there was a large discrepancy between his bank account deposits and his declared income. There was deliberate underreporting.[46] However, some authors have observed with regard to the *Fiore* ruling that by applying the Doctrine when it is not supported by the evidence, courts will open the door to the imposition of fraud penalties in cases where the taxpayer was negligent or reckless but did not intentionally underreport.[47] This can lead to a troublesome scenario where the Doctrine will apply to taxpayers who only committed negligence in filing or filling out their income tax returns ("ITRs").

To reiterate, unlike in the U.S., there has yet to be a Philippine statute that expressly defines willfulness. In the U.S., where the Doctrine is usually applied in tax evasion cases, the Model Penal Code[48] prescribes a standard definition of both "knowledge" and "willfulness." These provisions show that the prosecution only has to prove that an accused had a high probability of knowing a fact that would render him criminally liable. Section 2.02 of the Code provides:

> Section 2.02. General Requirements of Culpability.
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> (7) *Requirement of Knowledge Satisfied by Knowledge of High Probability.* When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person is aware of a high probability of its existence, unless he actually believes that it does not exist.[49]

The court instructs the jury "that an otherwise culpable defendant may be held accountable for a crime if the defendant deliberately avoided finding out about the crime."[50] This is more commonly known as the "willful-blindness instruction." In most jurisdictions in the U.S., when a penal offense requires knowledge of the accused to prove his guilt, the presiding judge may inform the jury that they may convict the accused if the prosecution can prove: (1) that the defendant was aware of a high probability that the illegal fact existed; (2) that the defendant consciously took deliberate actions not to

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[46] *Id.*

[47] Bryan Skarlatos & Stow Lovejoy, *Bad Facts Make Bad Law: The Tax Court Unnecessarily Used Willful Blindness to Find Fraud in Fiore*, 15 J. TAX PRAC. & PROC. 15, 18 (2013).

[48] While the Model Penal Code itself is not legally-binding, it has served as basis for criminal codes enacted by 34 of the 50 U.S. states. American Law Institute, Model Penal Code: Official Draft and Explanatory Notes, at xi (1985).

[49] *Id.* at 22.

[50] BLACK'S LAW DICTIONARY 936 (2009 ed.).

learn this fact; and (3) that the defendant did not actually believe that it was untrue.[51] The willful-blindness instruction has been adopted by U.S. Courts in the Manual of Model Criminal Jury Instructions.[52]

D. Doctrine as applied in the Philippines

i. *People v. Gloria Kintanar*

In the Philippines, only one tax evasion case applying the Doctrine has been affirmed by the Supreme Court: *People v. Kintanar*.[53] The accused in this case was Gloria Kintanar, a wealthy business owner and a distributor of Forever Living Products Philippines, Inc., a domestic multi-level marketing firm.

The Bureau of Internal Revenue (BIR) discovered that the accused and her spouse, Benjamin Kintanar, did not file their ITRs for tax years 1999 to 2001. Despite notices for investigation and conference with the taxing authority, the spouses failed to comply. This prompted the issuance of Formal Letters of Demand ("FLD") for the payment of deficiency income and VAT liabilities. While the spouses were able to file a protest for their ITRs for the tax years spanning 2000 to 2002, they did not submit additional documents, which rendered the FLD final, executory, and demandable. The respective Revenue District Officers ("RDOs") testified that there were no records of any ITRs filed by the accused and her spouse. Thereafter, criminal complaints were filed against her for willfully, unlawfully, and feloniously failing to file her ITRs for tax years 2000 and 2001. Kintanar voluntarily surrendered before the CTA and pleaded "not guilty" to both charges.[54]

In her defense, Kintanar claimed that she did not willfully fail to file her tax returns. She offered in evidence her duly accomplished ITRs filed on March 28, 2001 and April 5, 2002, but admitted that her husband had

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[51] United States v. Heredia, 483 F.3d 913, 917 (9th Cir. 2007).

[52] NINTH CIRCUIT MODEL JURY INSTRUCTION (2010), *available at* https://www.ce9.uscourts.gov/jury-instructions/sites/files/WPD/Criminal_Instructions_2021_9_0.pdf. Based on *Heredia* and *Jewell*, the NINTH CIRCUIT MODEL JURY INSTRUCTION instructs the jury that in finding guilt based on deliberate ignorance, they must determine that the accused, beyond a reasonable doubt, "1. was aware of a high probability that [drugs were in the defendant's automobile], and 2. deliberately avoided learning the truth. You may not find such knowledge, however, if you find that the defendant actually believed that [no drugs were in the defendant's automobile], or if you find that the defendant was simply negligent, careless, or foolish."

[53] G.R. No. 196340, Aug. 11, 2011.

[54] People v. Kintanar, CTA Crim. Case No. O-033 (Ct. of Tax Appeals Aug. 26, 2009).

personally filed their joint returns. In turn, her husband claimed that his accountant, Marina Mendoza, handled everything related to tax matters, including the preparation of ITRs.[55]

In its decision, the CTA Second Division enumerated the essential elements that the prosecution must prove beyond reasonable doubt in order to convict an accused-taxpayer, as follows:

> (1) That the accused was a person required to make or file a return;
> (2) That accused failed to make or file the return at the time required by law; [and]
> (3) That the failure to make or file the return was willful.[56]

The first element was admitted by Kintanar. The second element was satisfied by the testimony and certification of the RDOs that no such ITRs were filed. The third element was predicated upon "deliberate ignorance" or "conscious avoidance." The CTA Second Division ruled:

> Accused's reliance on her husband to file the required ITRs without ensuring full compliance thereon is considered as a willful act on her part to delegate the performance of her legal duty to her husband tantamount to "deliberate ignorance" or "conscious avoidance" on her part to determine the facts surrounding the filing of the required income tax returns.[57]

The decision was affirmed by the CTA *En Banc*, which decided in favor of the prosecution and ruled that it was sufficiently proven beyond reasonable doubt that the petitioner deliberately failed to make or file a return. The ruling of the appellate court considered that the accused was "an experienced businesswoman, and having been an independent distributor [or] contractor of FLPPI," she "ought to know and understand all the matters concerning her business." The court further ruled that since Kintanar was a business owner, the "natural presumption" was that she should have taken ordinary care of her tax duties and obligations. Kintanar's neglect or omission was tantamount to "deliberate ignorance" or "conscious avoidance."[58] On

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[55] *Id.*

[56] *Id.*

[57] *Id.* at 22. This pinpoint citation refers to the copy of this decision uploaded to the Court of Tax Appeals Website.

[58] [Hereinafter "*Kintanar*"], CTA EB Crim. No. 006 (Ct. of Tax Appeals Dec. 3, 2010), at 28. This pinpoint citation refers to the copy of this decision uploaded to the Court of Tax Appeals Website.

August 11, 2011, the Supreme Court affirmed the decision of the CTA in a minute resolution.[59]

ii. *Benjamin G. Kintanar v. People*

In a separate criminal case filed against Gloria Kintanar's husband, Benjamin Kintanar, the CTA likewise applied the Doctrine.[60] Surprisingly, the CPA hired by Benjamin testified in court despite her non-appearance in Gloria Kintanar's trial. The CPA vehemently denied that she had ever prepared the ITRs of the spouses. The aforementioned rulings have set a precedent in criminal tax cases at the CTA level: the Doctrine can be applied in cases where a taxpayer relies on the work of his or her accountant with regard to the correctness of the relevant information included in one's ITR. The CTA ruled:

> The Court considers petitioner-accused's complete reliance on his supposed accountant to file his required ITRs, as a willful act to delegate the performance of his legal duty to said accountant, tantamount to "deliberate ignorance" or "conscious avoidance" on his part to ensure the filing of his required income tax returns. Consequently, as said accountant clearly failed to perform her supposed duties, petitioner-accused must bear the legal consequences arising from such omission.[61]

iii. *People v. Judy Anne L. Santos*

Strangely, in the case of *People v. Santos*,[62] the CTA ruled differently despite glaringly similar facts to the *Kintanar* cases. The taxpayer, Judy Anne Santos, was charged with tax evasion for under-declaring her actual income in her 2002 ITR. The prosecution proffered documentary evidence, such as a Certificate of Creditable Tax Withheld at Source from the accused's employer and other production companies that had employed her, including, among others, ABS-CBN, VIVA Productions, and Star Cinema Productions. In addition, the prosecution was able to present 14 witnesses, composed of employees of the production companies and officers from the investigating team of the BIR.[63]

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[59] People v. Kintanar, G.R. No. 196340, Aug. 11, 2011.

[60] Kintanar v. People, CTA EB Crim No. 012 (Ct. of Tax Appeals May 7, 2012).

[61] *Id.* at 16. This pinpoint citation refers to the copy of this decision uploaded to the Court of Tax Appeals Website.

[62] [Hereinafter "*Santos*"], CTA Crim. Case No. O-012 (Ct. of Tax Appeals Jan. 16, 2013).

[63] *Id.* at 5–8, 11–20. This pinpoint citation refers to the copy of this decision uploaded to the Court of Tax Appeals Website.

In her defense, Santos claimed that she started in the show business industry at a young age of 12 years old and that she had entrusted all of her transactions (e.g., contract negotiations, contract signing, and handling of fees) to her manager, Alfonso Lorenzo. She admitted that out of trust and confidence, and despite the absence of a written contract, Lorenzo received her paychecks, and she had no knowledge of how much she was earning per project. Santos further denied that her signature appeared on her 2002 ITR. She alleged that Lorenzo was in charge of filing the relevant returns and paying the corresponding taxes, which made him the custodian of her records. She also alleged that Lorenzo hired an accountant, Conchita Padua, for the preparation of her financial statements and ITRs. On the other hand, Padua admitted, although she was employed as an external auditor by a representative of Lorenzo, she failed to verify with third parties the actual income of Santos, and she merely "relied on the creditable tax certificates" provided by Lorenzo. The accountant disclosed that she had already shredded her engagement letter with Santos because five years had already lapsed and she could not recall the representative of Lorenzo with whom she discussed the financial statements.[64]

The CTA Third Division ruled that the first two elements of tax evasion were fully substantiated by the prosecution and admitted by the accused. The main issue was whether the accused willfully failed to supply the correct and accurate information in her 2002 ITR. The appellate court ruled in the negative. The tax court gave due weight to the fact that the accused had been dependent on her manager, who had handled her contract negotiations and filed her ITRs since she was 12 years old, and who also collected her talent fees, of which Santos had no knowledge of the actual amount. The court ruled that Santos was merely negligent, since her intention to settle the case negated any motive to commit fraud.[65]

In *Santos*, the tax court cited *Aznar v. CTA and CIR*,[66] where the Supreme Court pronounced that in determining if fraud was present in the filing of the taxpayer's ITR, it could not be merely presumed that Aznar acted fraudulently; rather, the prosecution must prove that there was in fact fraud.[67] In this regard, the CTA considered that Santos and her authorized CPA denied their signatures on the former's 2002 ITR, and that it was her manager,

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[64] *Id.* at 22–24.

[65] *Id.* at 41.

[66] G.R. No. L-20569, 58 SCRA 519, Aug. 23, 1974.

[67] *See id.* at 542.

Lorenzo, who provided all of the working papers. The prosecution, therefore, failed to establish guilt beyond reasonable doubt.[68]

The factual circumstances in *Santos* and *Kintanar* are strikingly similar: (1) Santos and Kintanar did not personally prepare their ITRs; (2) Santos and Kintanar authorized a CPA to determine their actual income and file the ITRs; and (3) Santos and Kintanar denied that they willfully evaded or defeated their tax liability. The different rulings in the two cases prove that there is a clear lack of guidelines in applying the Doctrine, and that its application is utterly subjective. It is argued that the lack of structure in applying the Doctrine is largely because it is alien to Philippine laws and contradicts some of the more established principles in this jurisdiction, as will be further discussed.

iv. *People v. Dr. Vicente Gana Castillo and Dr. Ma. Teresa Chan Castillo*

In *People v. Castillo and Chan-Castillo*,[69] Dr. Vicente Castillo and Dr. Ma. Teresa Castillo were spouses and practicing doctors in Makati. After the BIR was prompted by a Third Party Information, the investigating team discovered that the accused-spouses did not file their 2009 Joint ITR with their RDO in Makati. The non-filing was thereafter verified by various employees of the same office. In their defense, the accused-spouses presented their Joint ITRs filed and stamped by the BIR. To rebut the authenticity and due execution of the alleged ITRs presented, the prosecution contended that the rubber stamps used by the Bureau when it received 2009 ITRs during the last filing season bore the complete names of the receiving personnel. The ITRs presented by the spouses bore no such names of any receiving personnel.[70]

The accused-spouses posited that they hired Carmencita E. Roxas, who allegedly prepared and filed their ITRs. During the proceedings, Roxas testified that she had been preparing and filing the couple's ITRs with the BIR for 15 years.[71] As narrated in the CTA decision, Roxas recalled that she personally prepared and filed the Joint ITR in 2009. However, she admitted that she did not notice the absence of the name of the receiving agent in the

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[68] *Santos*, CTA Crim. Case No. O-012 at 36–37.

[69] [Hereinafter "*Castillo*"], CTA Crim. Case No. O-219 (Ct. of Tax Appeals Oct. 7, 2013).

[70] *Id.* at 3–5. This pinpoint citation refers to the copy of this decision uploaded to the Court of Tax Appeals Website.

[71] Roxas testified that she was the one who prepared and filed the ITRs of Spouses Castillo for tax years 1991, 1992, and 1997 up to 2009. The reason behind the staggered filing is the fact that the spouses were residing in the US for the years prior to 1991 and from 1992 up to 1997. *Id.* at 11–12.

rubber stamp used by the BIR.[72] Roxas also admitted that she was neither a CPA nor an accredited tax agent, as required by the Revenue Regulations.[73]

The CTA Second Division ruled that the accused-spouses did not willfully evade the payment of their taxes. The court held so primarily due to the failure of the prosecution to present evidence that the delegation of the preparation and filing to Roxas was attended with fraudulent intent to evade the payment of their income taxes. The court found that the spouses had no reason to believe that their ITR was not filed by Roxas, taking into consideration that she had been filing it for 15 years. The conduct of Roxas was held to be merely "negligent," since she failed to personally hand over the ITR of the accused to the receiving clerk. She also failed to check the receiving stamp placed in the purported receiving copy of the ITR.[74]

The CTA enumerated the requisites for the application of the Doctrine and determined its inapplicability in the case at bar. It explained:

> In order to prove the existence of "willful blindness", two requirements must be satisfied:
>
> 1. the accused must subjectively believe or is aware that there is a high probability that a fact exists or that there exists a suspected wrongdoing; and
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> 2. the defendant must take deliberate actions to avoid learning of that fact.
>
> As to the first requirement that the accused must subjectively believe or is aware that there is a high probability that a fact exists or that there is a suspected wrongdoing, the prosecution failed to establish the same. The prosecution failed to present any documentary or testimonial evidence which would show that the accused spouses were aware that it is highly probable that their Joint ITR for 2009 was not filed. Furthermore, unlike in the cases of People of the Philippines vs. Gloria Kintanar and People of the Philippines vs. Benjamin Kintanar, there was no admission on the part of the accused spouses that they failed to inquire or determine the facts surrounding the filing of their Joint ITR for 2009.

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[72] *Id.* at 12.
[73] *Id.* at 13.
[74] *Id.* at 27–28.

> In this case, the prosecution's allegation that the accused spouses continuously refused or failed to verify their compliance with their tax obligation was not supported by any testimonial or documentary evidence on the record. The prosecution likewise failed to present circumstantial evidence to support the argument.[75]

In addition, the CTA also acknowledged that the prosecution was unable to offer evidence that would indicate that the spouses were previously delinquent in filing their ITRs for the previous years. If the prosecution had done this, a presumption would have arisen that there was a high probability that the spouses were aware of the non-filing of their 2009 Joint ITR. To conclude, the court pointed out that the accused-spouses were both doctors and, as such, were not in any way related to tax or accounting practice. Hence, they were not expected to be aware of irregularities in the filing of the return.[76]

Effectively, the CTA opted to apply the *Santos* ruling rather than the Doctrine. In its decision, the tax court did not consider the non-filing of the accused spouses as "deliberate ignorance" but rather as simply being "negligent." Given that negligence is insufficient to convict a person under the Tax Code, the spouses were acquitted.[77]

Though the requisites of the Doctrine were enumerated by the tax court, there was no definite criteria provided in determining its applicability. By comparing the rulings in *Kintanar* and *Castillo,* the CTA solely relied on the fact that in the latter, "there was no admission on the part of the accused spouses that they failed to inquire or determine the facts surrounding the filing of their Joint ITR for 2009." Therefore, the accused-spouses were acquitted.[78] However, this is incompatible with the ruling in *Santos,* where the Doctrine was not applied despite the admission of the accused that she was also unaware of her actual income, a fact directly related to her ITR.[79] Thus far, the CTA rulings have been inconsistent. Undoubtedly, the tax court's discussion in *Castillo* has brought more questions than answers.

v. *Rogelio A. Tan v. People*

In *Tan v. People*,[80] Rogelio Tan was the President and General Manager of Jadewell Parking Systems Corporation ("Jadewell"). The corporation's

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[75] *Id.* at 29.
[76] *Id.* at 29–30.
[77] *Id.* at 30.
[78] *Id.* at 29.
[79] *Santos*, CTA Crim. Case No. O-012 at 23.
[80] [Hereinafter "*Tan*"], CTA EB Crim. No. 022 (Ct. of Tax Appeals Nov. 18, 2014).

primary purpose was to manage and operate parking areas in any location in the Philippines or abroad by providing its latest generation advancement in technology products.[81]

Based on a Memorandum of Agreement with local government units, Jadewell agreed to install, manage, and operate a parking system in city streets. Two Informations were filed against Tan for violating Section 255 of the Tax Code. The Informations stated that Tan, as the President and General Manager of Jadewell, willfully and feloniously failed to supply correct and accurate information in its ITRs for tax years 2003 and 2004.[82]

In his defense, Tan contended that the Doctrine could not be applied since the prosecution had yet to prove that he was aware that the information in the ITRs was incorrect. He also alleged that the notice of tax deficiencies was not served upon him, but upon his bookkeeper, Via Aguas, who was not called to the witness stand. Tan also viewed his acts of offering Jadewell's books of accounts to the BIR—while the case was pending with the Department of Justice—as proof that negated the alleged willful intent to evade taxes. Finally, Tan argued that the Doctrine could not supplant the constitutional requirement in criminal cases of proof beyond reasonable doubt, which burden the prosecution failed to discharge.[83]

The CTA *En Banc* ruled that the accused willfully failed to supply the correct and adequate information in the ITR of the corporation. In its decision, the tax court emphasized the admission of the accused that he was not only the President but also the General Manager of Jadewell in the years 2003 and 2004. As the chief executive, the accused was the top official for operations. Since the filing of ITRs is a significant matter for any business operation, the possibility that the accused was unaware of the filing of the fallacious ITRs was nil.[84]

The CTA *En Banc* also denied Tan's contention that the person signing the ITR, i.e., Aguas, should be held solely liable. The court held that the signature of the accused need not appear on the ITRs filed. Despite the claim of the accused that Aguas was not connected with Jadewell, the appellate court deemed such assertion "incredulous," "amazing," and "contradicting," considering the fact that Aguas signed several payment forms for the

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[81] *Id.* at 2. This pinpoint citation refers to the copy of this decision uploaded to the Court of Tax Appeals Website.

[82] *Id.* at 4.

[83] *Id.* at 7–8.

[84] *Id.* at 16–17.

company's tax liability. Again, the court considered the fact that as the top executive of the company, Tan was already criminally liable under Section 253(d) of the Tax Code.[85]

Finally, in the most notable portion of the ruling, the CTA *En Banc* expanded the ambit of the Doctrine to not only include violations involving non-filing of tax returns or non-payment of the corresponding taxes, but also the failure to supply the correct and accurate information in ITRs. Thus, the appellate court ruled:

> Likewise *sans* support in law and jurisprudence is accused' [sic] defense that the "willful blindness" rule applies only to violation of Section 255 involving non-filing of tax returns or non-payment of the corresponding taxes and not for failure to supply correct and accurate information in the returns. Per accused, "want of knowledge of obligation" or "good faith" cannot be presumed.
>
> However, none of the cases cited by accused categorically states that the "willful blindness" doctrine applies only to cases involving non-filing of return or nonpayment of corresponding taxes. Willful blindness, as defined by Black's Law Dictionary, is the "*deliberate avoidance of knowledge of a crime, esp. by failing to make a reasonable inquiry about suspected wrongdoing despite being aware that it is highly probable.*" As correctly observed by the Court in Division, there was "willful blindness" on the part of accused. As president and general manager of Jadewell, he should, at the very least, knew [sic] who was authorized to sign the ITR and other tax filings for his company, but *nay.*[86]

The CTA applied the Doctrine based on the definition in BLACK'S LAW DICTIONARY.[87] Simple as it may seem, the reference made in *Tan* gave rise to a serious and dangerous implication: the Doctrine can be applied in cases involving "crimes" where knowledge of an incriminating fact is required. This pronouncement, if affirmed by the Supreme Court, could set an alarming precedent; the Doctrine may be applied to other *mala in se* penal offenses, thus amounting to judicial legislation, as will be further discussed in Part IV.

As can be further gleaned from the *Tan* ruling, the appellate court failed to recognize the issue raised by Rogelio regarding the unconstitutionality of the Doctrine, and the manner in which it supplants proof beyond reasonable doubt required from the prosecution. It must be

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[85] *Id.* at 17.

[86] *Id.* at 17–18.

[87] *See* BLACK'S LAW DICTIONARY, *supra* note 39.

noted that in *Banco de Oro v. Republic*,[88] the Supreme Court ruled that the CTA is authorized to rule on the constitutionality of tax laws, revenue regulations, and other issuances by the Commissioner of Internal Revenue. The Supreme Court reasoned:

> [W]hile there is no express grant of such power, with respect to the CTA, Section 1, Article VIII of the 1987 Constitution provides, nonetheless, that judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law and that judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and *to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.*[89]

II. DISSONANCE BETWEEN THE WILLFUL BLINDNESS DOCTRINE AND PHILIPPINE LAWS

By reason of the CTA case analysis alone, it can be surmised that there are many factors that may render the applicability of the Doctrine futile or improper in the Philippine legal landscape. Apart from the insufficiency of statutes that permit the substitution of presumed knowledge for actual knowledge in criminal offenses, our judicial system does not implement a jury trial, in which the guilt of an accused on the ground of willful blindness may be determined by a jury based on the court's instruction.[90] Yet, there is a more compelling justification to eradicate this precept from Philippine jurisprudence: it is blatantly unconstitutional.

A. The Doctrine disregards the basic rules on evidence and violates the constitutional safeguard on the presumption of innocence of the accused.

The accused in a criminal proceeding cannot be convicted unless there is proof beyond reasonable doubt. Under the Rules of Court, this quantum of evidence is characterized, as follows:

> SECTION 2. *Proof beyond reasonable doubt.* – In a criminal case, the accused is entitled to an acquittal, unless his or her guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not

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[88] G.R. No. 198756 (Resolution), Aug. 16, 2016.

[89] *Id.* (Emphasis supplied.)

[90] *See* NINTH CIRCUIT MODEL JURY INSTRUCTION, *supra* note 53.

> mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.[91]

Proof beyond reasonable doubt is rooted in the presumption of innocence enshrined in the Bill of Rights of the 1987 Constitution, which provides that "in all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf."[92]

Simply put, the prosecution has the burden of proving beyond reasonable doubt each element of the crime. The case will rise or fall based on the strength of the prosecution's own evidence and never on the weakness, or even absence, of the defense. Failing to prove the required quantum of evidence, the presumption of innocence must prevail, and the accused acquitted.[93]

The prosecution, however, is not left without any recourse. In *Zabala v. People*,[94] the Supreme Court ruled that it was not necessary to present direct evidence to convict an accused. It held:

> The lack or absence of direct evidence does not necessarily mean that the guilt of the accused cannot be proved by evidence other than direct evidence. Direct evidence is not the sole means of establishing guilt beyond reasonable doubt, because circumstantial evidence, if sufficient, can supplant the absence of direct evidence. The crime changed may also be proved by circumstantial evidence, sometimes referred to as indirect or presumptive evidence. Circumstantial evidence has been defined as that which "goes to prove a fact or series of facts other than the facts in issue, which, if proved, may tend by inference to establish a fact in issue."[95]

In tax evasion cases, the Tax Code only criminalizes taxpayers who *willfully* fail to pay their taxes or who falsify information relevant in filing

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[91] RULES OF COURT, Rule 133, § 2.
[92] CONST. art. III, § 14.
[93] Corona-Castillo v. Ct. of Tax Appeals, G.R. No. 220094, Feb. 19, 2018.
[94] G.R. No. 210760, 748 SCRA 246, Jan. 26, 2015.
[95] *Id.* at 254. (Citations omitted.)

ITRs.[96] It must be noted that there is a fine line between circumstantial evidence and the application of the Doctrine. In the former, the court can consider other badges of fraud to determine if a taxpayer has indeed willfully or fraudulently violated penal provisions of the Tax Code. The latter method, on the other hand, adopts a subjective approach in determining guilt beyond reasonable doubt, which may consequently misplace negligence with actual intent or malice to defraud the government of its taxes.[97]

Circumstantial evidence may also be used to determine fraud in civil cases involving tax obligations. In such cases, the required quantum of proof is only clear and convincing evidence.[98] As Justice J.B.L. Reyes opined in *Perez v. CTA*,[99] the substantial under-declaration of income in the ITRs of the taxpayer for four consecutive years, coupled with his or her intentional overstatement of deductions, gives rise to the imposition of the fraud penalty. In this decision, the defendant did not attempt to explain or testify on the declaration in his ITR of "substantial and unspecified losses."[100] Then, in *Republic v. Gonzales*,[101] the Supreme Court ruled that "since fraud is a state of mind, it need not be proved by direct evidence but may be inferred from the circumstances of the case." In *Gonzales*, the defendant was deemed to have intentionally evaded his taxes due to his failure to declare, for taxation purposes, his true and actual income derived from his business for two consecutive years. The Court used this to determine his fraudulent intent to cheat the government of taxes.[102]

In *Kintanar*, circumstantial evidence was held to be sufficient in proving the accused's willfulness to evade taxes. The tax court took into account the following circumstances: (1) the accused was a prominent business owner; (2) she failed to answer the several notices of the BIR to explain her tax deficiencies; and (3) as certified by the taxing authority, she presented false and fraudulent ITRs before the CTA, all of which bore her signature.[103] There was no need for the court to apply the Doctrine. In fact, there is no law that would warrant the application of this precept by the Philippine courts.

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[96] TAX CODE, § 254–55, 257.
[97] *See* Skarlatos, *supra* note 48.
[98] Riguer v. Mateo, G.R. No. 222538, 828 SCRA 109, 119, June 21, 2017.
[99] 103 Phil. 1167 (1958).
[100] *Id.*
[101] G.R. No. 17962, 13 SCRA 633, Apr. 30, 1965.
[102] *Id.* at 641.
[103] *Kintanar*, CTA EB Crim. No. 006 at 26–30.

Currently, there is a lack of Supreme Court decisions that elaborate upon the applicability of the Doctrine in this jurisdiction. However, the CTA has been consistently applying this principle in more recent cases. Verily, the tax court has made use of its ruling in *Kintanar* to justify the usage of the Doctrine. In *People v. Gerardo Tevez*,[104] the CTA ruled that the application of this principle is appropriate in instances where "a person suspects a fact, realizes its probability, but refrains from obtaining final confirmation in order to be able to deny knowledge if apprehended."[105] In *Tan*, the CTA *En Banc* effectively expanded the application of the Doctrine. In its decision, it held that the Doctrine was not limited to non-filing of ITRs and nonpayment of taxes.[106]

It is a basic legal maxim that intent can only be inferred from the conduct of a person. It cannot be substituted by alleging willful ignorance or deliberate avoidance. Under the Doctrine, substitution of a mental state for the required *mens rea* of knowledge for criminal offenses is allowed only in jurisdictions authorized by statute, such as in US criminal law.[107] Thus, in *Soriano v. People*,[108] the Court ruled that intent is a mental state, the existence of which is shown by the overt acts of a person.[109]

In *US v. Catolico*,[110] the accused was a justice of the peace who rendered decisions that awarded damages for breach of contract. The defendants in these cases deposited the monetary awards and bonds that were later deemed insolvent. In spite of the insolvency of the bonds, the accused ordered that the sums be delivered to the plaintiffs. Consequently, the plaintiffs filed a charge for malversation against the accused. The Supreme Court ruled that despite the presumption that there is criminal intent from the commission of an unlawful act, the conduct of the accused was not unlawful and was actually done in good faith. The Court explained:

> It is true that a presumption of criminal intention may arise from proof of the commission of a criminal act; and the general rule is that, if it is proved that the accused committed the criminal act charged, it will be presumed that the act was done with criminal intention, and that it is for the accused to rebut this presumption.

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[104] CTA Crim. Case No. O-299 (Ct. of Tax Appeals Nov. 16, 2015).

[105] *Id.* at 10. This pinpoint citation refers to the copy of this decision uploaded to the Court of Tax Appeals Website.

[106] CTA E.B. Crim. No. 022 at 17.

[107] Mackey v. Fullerton, 4 P. 1198, 1200 (Colo. 1884).

[108] 88 Phil. 368 (1951).

[109] *Id.* at 374.

[110] 18 Phil. 504 (1911).

> But it must be borne in mind that the act from which such presumption springs must be a criminal act. In the case before us the act was not criminal. *It may have been an error; it may have been wrong and illegal in the sense that it would have been declared erroneous and set aside on appeal or other proceeding in the superior court.* It may well be that his conduct was arbitrary to a high degree, to such a degree in fact as properly to subject him to reprimand or even suspension or removal from office. But, from the facts of record, it was not criminal. As a necessary result no presumption of criminal intention arises from the act.[111]

The same rationale is appropriate in cases involving tax evasion, especially since lack of willfulness to evade taxes merely constitutes negligence and typically gives rise to civil penalties only.[112] For this reason, mere speculations cannot substitute for proof in establishing the guilt of the accused in criminal cases.[113] As pointed out in one case:

> [S]uspicion, no matter how strong, must never sway judgment. Where there is reasonable doubt, the accused must be acquitted even if their innocence was not established. The Constitution presumes a person innocent until proven guilty by proof beyond reasonable doubt. When guilt is not proven with moral certainty, it has been our policy of long standing that the presumption of innocence must be favored, and exoneration granted as a matter of right.[114]

B. The Doctrine is violative of the principle of separation of powers, the proscription against judicial legislation, and the right to due process of the accused.

Despite the objective of the Supreme Court to adopt a liberal construction of statutes, the principle of separation of powers and proscription against judicial legislation must prevail. Thus, courts resort to a liberal construction of statutes, by which they ascertain their true meaning from the language used and the subject matter.[115] The Supreme Court has held:

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[111] *Id.* at 508. (Emphasis supplied.)

[112] TAX CODE, § 248.

[113] Monteverde v. People, G.R. No. 139610, 387 SCRA 196, 215, Aug. 12, 2002, *citing* Femandez v. People, G.R. No. 138503, 341 SCRA 277, Sept. 28, 2000.

[114] *Id.*

[115] Tañada v. Yulo, 61 Phil. 515, 519 (1935).

> There is a sharp distinction, however, between construction of this nature and a court's act of engrafting upon a law something that has been omitted which someone believes ought to have been embraced. The former is liberal construction and is a legitimate exercise of judicial power. The latter is judicial legislation forbidden by the tripartite division of powers among the three departments of government, [i.e.,] the executive, the legislative, and the judiciary.[116]

In *Corpuz v. People*,[117] the Supreme Court noted that it should give Congress a chance to perform its primordial duty of law-making and avoid pre-empting or usurping its inherent powers of making and enacting laws. While it may be the most expeditious approach, a shortcut by judicial fiat is a dangerous proposition, lest the Court commit judicial legislation.[118]

Despite the recognition of judicial activism in a *catena* of cases,[119] the courts' exercise of judicial power should not encroach on the powers of the other branches of government. The Court must unwaveringly exercise its powers within the confines and domains allowed under our Constitution.[120] Though the application of the Doctrine would result in a swifter conviction of a tax evader, no amount of convenience should convince the Court to contradict the manifest intent of the framers. In other words, judicial activism should never be allowed to become judicial exuberance.

In relation to willfulness, "knowledge" is a connected, but not strictly similar, term. It is not defined in any Philippine tax statute. However, the Strategic Trade Management Act[121] gives a brief and concise definition, as follows:

> SECTION 5. Definition of Terms. — As used in this Act:
> (l) Awareness or cognizance that a circumstance exists or is substantially certain to occur. It is also an awareness or cognizance of facts and circumstances that would lead a reasonable person to believe its existence or factual occurrence. It also refers to the

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[116] *Id.*

[117] G.R. No. 180016, 724 SCRA 1, Apr. 29, 2014.

[118] *Id.* at 57.

[119] MMDA v. Concerned Residents of Manila Bay, G.R. No. 171947, 574 SCRA 661, Feb. 15, 2011; Francisco v. House of Representatives, G.R. No. 160261, 415 SCRA 44, Nov. 10, 2003; Chavez v. JBC, G.R. No. 202242, 676 SCRA 579, Apr. 16, 2013, *citing* Central Bank Employees Association, Inc. v. BSP, G.R. No. 148208, 446 SCRA 299, Dec. 15, 2004 (Panganiban, *C.J., dissenting*); Peralta v. COMELEC, G.R. No. L-47771, 82 SCRA 30, Mar. 11, 1978 (Fernando, *C.J., concurring and dissenting*).

[120] Chavez v. JBC, G.R. No. 202242, 676 SCRA 579, 593, Apr. 16, 2013.

[121] Rep. Act No. 10697 (2015), § 5(1).

> willful disregard of facts known to a person or willful avoidance of facts.

In one criminal case, the Supreme Court cited the US Model Penal Code to characterize knowledge as an element of a penal offense. In *Dizon-Pamintuan v. People*,[122] it held that "[w]hen knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person is aware of a high probability of its existence unless he actually believes that it does not exist."[123] However, it can be reasoned that in *Dizon*, the Court applied a different standard in determining the mental state of the accused and effectively lowered the burden of proof required to establish knowledge as an element of the offense, from "actual" to merely "a high probability" of awareness of an incriminating act.

Knowledge and willful intent to defeat taxes, though easy to allege, are difficult to prove. As pronounced in *Dizon*, it refers to a mental state of awareness about a fact.[124] Because the court cannot penetrate the mind of an accused and state with certainty what is contained therein, it must determine such knowledge with care from the overt acts of that person. The court, when given two equally plausible states of cognition or mental awareness, should choose that which sustains the constitutional presumption of innocence.[125]

Some authors argue, however, that knowledge and willful ignorance are not the same thing. *Robbins* defined deliberate ignorance as recklessness; since it is subjective, the notion of "risk" of knowing a criminal act under this dictum is merely predicated on probability rather than certainty. Knowledge presupposes awareness of the existence of a fact rather than recognition of its probability. Hence, criminal knowledge requires certainty and absence of doubt.[126] Moreover, by applying standards of strict construction, willful blindness requires suspicion to find guilt, which "implies a lack of, rather than the presence of knowledge."[127]

At this juncture, it bears emphasis that willfulness is only material to acts *malum in se*. Tax evasion cases are considered *malum in se*, as they require

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[122] [Hereinafter "*Dizon*"], G.R. No. 111426, 234 SCRA 63, July 11, 1994.

[123] *Id.* at 73, *citing* BLACK'S LAW DICTIONARY 872–73 (1991 ed.), *further citing* Model Penal Code, § 2.02(7).

[124] *Id.*

[125] Diong-An v. Ct. of Appeals, G.R. No. 45967, 138 SCRA 39, 45, Aug. 5, 1985.

[126] *See* Robbins, *supra* note 36, at 220–27.

[127] Ira Robbins, *Willful Blindness as a Substitute for Criminal Knowledge*, 63 IOWA L. REV. 466, 473 (1977).

intent to do the wrongful act.[128] It is not sufficient for the prosecution to establish the nonpayment of taxes. The prosecution must prove that the taxpayer "willfully" and "maliciously" evaded or lessened the payment of taxes. The quantum of proof required to establish one's intent to commit a tax crime is proof beyond reasonable doubt.[129]

Intent to commit a crime is difficult to prove since it is a mental act,[130] unless the surrounding circumstances of the act are such that they leave no room for doubt that the intention to commit a crime is clear.[131] Apart from an actual admission,[132] knowledge can only be proven with circumstantial evidence, which requires that: (1) there is more than one circumstance; (2) the facts from which the inferences are derived are proven; and (3) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[133]

The use of willful ignorance openly disregards the principle of separation of powers between the judiciary and Congress, because the court effectively substitutes a different *mens rea* for the required knowledge. Under the Doctrine, a mental state is substituted for actual knowledge to secure a conviction, contrary to what was intended by the legislature.[134]

In *People v. Claro*, [135] the Supreme Court emphasized the importance of determining each element of a crime beyond reasonable doubt in compliance with the right to due process afforded to an accused—a right embodied in the Constitution.[136] The Court explained:

> '[…] Due process commands that no man shall lose his liberty unless the Government has borne the burden of . . . convincing the factfinder of his guilt.' To this end, the reasonable-doubt standard is indispensable, for it 'impresses on the trier of fact the necessity of reaching a subjective state of certitude of the facts in issue.' […]

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[128] In a dissenting opinion, Associate Justice Arturo D. Brion lists, among others, estafa, theft, murder, whether frustrated or attempted, attempted bribery, robbery, direct bribery, embezzlement, extortion, frustrated homicide, falsification of document, fabrication of evidence, evasion of income tax, and rape as crimes involving moral turpitude. Ocampo v. Enriquez, 798 Phil. 227, 692 (2016) (Caguioa, *J.*, dissenting).

[129] RULES OF COURT, Rule 133, § 2.

[130] United States v. Mendoza, 38 Phil. 691, 693 (1918).

[131] People v. Mabug-at, 51 Phil. 967, 970 (1926).

[132] *See* Charlow, *supra* note 37, at 1359.

[133] RULES OF COURT, Rule 133, § 4.

[134] *See* Robbins, *supra* note 36, at 194.

[135] G.R. No. 199894, 822 SCRA 365, Apr. 5, 2017.

[136] CONST. art. III, § 14(1).

> Moreover, use of the reasonable-doubt standard is indispensable to command the respect and confidence of the community in applications of the criminal law. It is critical that the moral force of the criminal law not be diluted by a standard of proof that leaves people in doubt whether innocent men are being condemned. It is also important in our free society that every individual going about his ordinary affairs have confidence that his government cannot adjudge him guilty of a criminal offense without convincing a proper factfinder of his guilt with utmost certainty.
>
> Lest there remain any doubt about the constitutional stature of the reasonable-doubt standard, we explicitly hold that the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.[137]

As earlier noted in the discussion on the CTA rulings, the application of the Doctrine in tax evasion cases has been inconsistent and subjective, to say the least. If the application of the Doctrine persists and results in a conviction—regardless of the failure of the prosecution to adduce any evidence supporting its claim of the required "intent" to defraud the government of its tax collections—it will deprive the accused of their basic and fundamental constitutional right to due process. Conviction within reasonable doubt will violate both procedural due process of law and the presumption of innocence of the accused.

C. Ignorance or mistake of fact results in an acquittal.

Ignorance of the law is defined as want of knowledge or acquaintance with the laws of the land insofar as they apply to the act, relation, duty, or matter under consideration.[138] Under the dictum *ignorantia legis non excusat*, a person is presumed to know the law. This is codified in the New Civil Code, which provides that "ignorance of the law excuses no one from compliance therewith."[139] However, it must not be misunderstood to apply to instances where there is an ignorance or mistake of fact—likewise known as *ignorantia facti excusat*—which is a valid defense in criminal cases and presupposes good faith on the part of an accused.

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[137] People v. Claro, 822 SCRA at 379-380, *citing* Duncan v. Lousiana, 391 US 145 (1968). (Emphasis and citations omitted.)

[138] *Ignorance of law,* BLACK'S LAW DICTIONARY 589 (2009 ed.).

[139] CIVIL CODE, art. 3.

To delineate between ignorance of the law and mistake of fact, the Court said that as a general rule, the latter is a valid defense of the accused in a prosecution for a felony; such defense negates malice or criminal intent. The former, however, is not an excuse because everyone is presumed to know the law.[140] The defense of mistake of fact cannot be negated by *ignorantia legis non excusat*,[141] since the former relates to knowledge of factual matters, while the latter refers to knowledge of applicable laws.

To shed some light on the rationalization for exonerating an accused from criminal liability based on his ignorance or mistake of an incriminating fact, the landmark case of *US v. Ah Chong*[142] is instructive. The Court said:

> The question then squarely presents itself, whether in this jurisdiction one can be held criminally responsible who, by reason of a mistake as to the facts, does an act for which he would be exempt from criminal liability if the facts were as he supposed them to be, but which would constitute the crime of homicide or assassination if the actor had known the true state of the facts at the time when he committed the act. To this question we think there can be but one answer, and we hold that under such circumstances there is no criminal liability, provided always that the alleged ignorance or mistake or fact was not due to negligence or bad faith.
>
> In broader terms, ignorance or mistake of fact, if such ignorance or mistake of fact is sufficient to negative a particular intent which under the law is a necessary ingredient of the offense charged (e.g., in larceny, *animus furendi*; in murder, malice; in crimes intent) "cancels the presumption of intent," and works an acquittal; except in those cases where the circumstances demand a conviction under the penal provisions touching criminal negligence; and in cases where, under the provisions of [A]rticle 1 of the Penal Code one voluntarily committing a crime or misdemeanor incurs criminal liability for any wrongful act committed by him, even though it be different from that which he intended to commit.[143]

In a more recent case, the Supreme Court laid down the requisites of *ignorantia facti excusat*. Thus:

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[140] Manuel v. People, G.R. No. 165842, 476 SCRA 461, 479, Nov. 29, 2005.
[141] *Id.*
[142] 15 Phil. 488 (1910).
[143] *Id.* at 493. (Citations omitted.)

> [A] "mistake of fact" is a misapprehension of a fact which, if true, would have justified the act or omission which is the subject of the prosecution. Generally, a reasonable mistake of fact is a defense to a charge of crime where it negates the intent component of the crime. It may be a defense even if the offense charged requires proof of only general intent. The inquiry is into the mistaken belief of the defendant, and it does not look at all to the belief or state of mind of any other person. A proper invocation of this defense requires (a) that the mistake be honest and reasonable; (b) that it be a matter of fact; and (c) that it negate the culpability required to commit the crime or the existence of the mental state which the statute prescribes with respect to an element of the offense.[144]

In view thereof, it is noteworthy to examine the U.S. Model Penal Code to determine whether the facts and evidence existing in a case may give rise to the use of the Doctrine. This Code provides two exemptions from criminal liability on the occasion of the willful ignorance of the accused. First, when an accused has a mistaken belief contrary to the fact of which knowledge is required for conviction, the accused is excused from criminal liability. The Code provides:

> *Requirement of Knowledge Satisfied by Knowledge of High Probability.* When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person is aware of a high probability of its existence, unless he actually believes that it does not exist.[145]

Second, Section 2.04 of the same Code explicitly recognizes the maxim *ignorantia facti excusat.* Thus:

> Ignorance or mistake as to a matter of fact or law is a defense if:
> (a) the ignorance or mistake negatives the purpose, knowledge, belief, recklessness or negligence required to establish a material element of the offense; or
> (b) the law provides that the state of mind established by such ignorance or mistake constitutes a defense.[146]

An analysis of the discussion in *Santos* would reveal that there was a mistake of fact, even though this was not expressly mentioned by the CTA. In absolving the accused-taxpayer, the tax court cited the circumstances

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[144] Yapyuco v. Sandiganbayan, G.R. No. 120744, 674 SCRA 420, 457-458, June 25, 2012.

[145] American Law Institute, *supra* note 49, at 22.

[146] *Id.* at 26–27.

surrounding her relationship with her manager. In arriving at this decision, the court made the following observations:

> Based on the records of the case, the accused testified that as early as the age of twelve (12) years old, she had engaged the services of Mr. Alfonso Lorenzo, without any written contract, considering that the same was also the Manager of her older brother, and that she has considered him a family member. Further, she maintains that the set-up of their Manager-Talent relationship is that the former shall handle all her transactions, *inter alia*, contract negotiations, contract signing, handling of fees, including the collection thereof, and that out of trust, respect and confidence on her Manager, she had signed contracts upon his mere assurances, even without reading the same, and that her fees, were most of the time, issued in the name of her Manager, who collects the same, and thus, she has no knowledge of how much she was earning per project.
>
> In addition, she denied the signature appearing on top of the name "Judy Anne Santos" in the ITR for taxable year 2002, presented by the prosecution, and that while she admitted the signatures appearing in the Counter-Affidavit with Counter-Charge dated July 7, 2005, and Rejoinder-Affidavit dated August 3, 2005, as well as, those appearing on the contracts presented by the prosecution, she claims that she was never given a chance by her Manager and her then counsel to read the contents of the same.
>
> Lastly, she maintains her intention to settle the case were it not for the opposition against it by her Manager and then counsel.
>
> Her testimony was supported by Conchita Padua, Certified Public Accountant, hired as an external auditor by a representative of the Manager of the accused. She testified that all the working papers were provided by the Manager of the accused."[147]

The ruling in *US v. McBride*[148] may guide the courts in determining whether there was a mistake or ignorance of fact. In *McBride*, it was ruled that the signature on a tax return is enough evidence to impute knowledge of the contents therein.[149] Likewise, in the *Kintanar* ruling, actual knowledge of tax evasion could have been proven by circumstantial evidence, such as the acts of the accused after they were issued tax assessments and notices, or the fact

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[147] *Santos*, CTA Crim. Case No. O-012 at 36-37.

[148] 908 F. Supp. 2d 1186, 1213-14 (D. Utah 2012).

[149] *Id., citing* Greer v. Comm'r, 595 F.3d 338, 347 n.4 (6th Cir. 2010).

that they had subscribed their signatures in the ITRs, which implied an admission that they knowingly filed fraudulent returns. In contrast to the *Santos* ruling, the spouses Kintanar did not deny or reject the signatures in the fraudulent returns. In fact, they were the ones who presented it to the court.[150] There was no need to apply the Doctrine in the *Kintanar* rulings to secure their conviction since the spouses had undisputedly signed the fraudulent returns.

CONCLUSION

There has yet to be a Supreme Court decision that explicitly allows the application of the Doctrine in tax evasion cases. Though the *Kintanar* ruling was affirmed by the Supreme Court through a minute resolution that qualified as an adjudication on the merits,[151] the resolution does not have the status of binding precedent.[152] Despite the absence of legal basis, the CTA has consistently applied the Doctrine in criminal cases falling under its jurisdiction, especially in the past few years. Because of its current usage by the CTA, there is a great probability that it may soon reach the highest court of the land, since findings and conclusions of the CTA as a specialized appellate court are well-respected by the Supreme Court.[153] In fact, the Doctrine has already been recognized and cited by prominent Filipino authors in the field of taxation.[154]

To aggravate the CTA's use of the Doctrine, there is likewise no statute that defines willfulness and knowledge in criminal cases. Thus, the introduction of the Doctrine in the Philippines is premature, in the absence of a statute authorizing the courts to apply it. In the face of the widespread application of the Doctrine in foreign jurisdictions, Philippine courts and taxing authorities must inhibit themselves from further broadening the required *mens rea* in tax evasion cases, lest they commit judicial legislation and replace the presumption of innocence with the presumption of guilt of the accused.

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[150] *Kintanar*, CTA EB Crim. No. 006 at 11.

[151] Smith Bell & Co. (Phils.), Inc. v. Ct. of Appeals, G.R. No. 56294, 197 SCRA 201, 207, May 20, 1991.

[152] Alonso v. Cebu Country Club, Inc., G.R. No. 130876, 375 SCRA 390, 408-409, Jan. 31, 2002.

[153] Commissioner of Internal Revenue v. De La Salle U., Inc., 808 SCRA at 192, *citing* Comm'r of Internal Revenue v. Asian Transmission Corp., 640 SCRA at 200.

[154] VICTORINO MAMALATEO, REVIEWER ON TAXATION 718–19 (2019); IGNATIUS MICHAEL INGLES, TAX MADE LESS TAXING 23–24 (2021).

Reverting to the principles embodied in the Constitution, the Doctrine tilts the scales of justice toward the prosecution when it fails to prove willfulness in evading taxes. In instances where the taxpayer merely denies knowingly defeating their taxes, even though alibi is the weakest form of defense, the prosecution must still prove its case beyond reasonable doubt. It is worth emphasizing that the burden of proof in criminal proceedings never shifts—it stays with the prosecution. The accused need not present a single piece of evidence in their defense if the State has not discharged its *onus*. As the Supreme Court put it, the accused "can simply rely on their right to be presumed innocent."[155]

Deliberate ignorance is a mental state that does not necessarily indicate knowledge or presence of criminal intent. When a criminal offense, such as tax evasion, requires willfulness, it cannot be substituted by a presumption of a mental state.[156] In essence, willful blindness merely constitutes gross negligence or recklessness. If the practice of using deliberate ignorance to convict alleged tax evaders continues, the odds are high that the courts will impose criminal penalties such as imprisonment in cases where the taxpayer is simply negligent or reckless.[157] This is against the legislative intent of the Tax Code, which already prescribes corresponding sanctions to persons who do not intentionally underreport their taxable income, with only civil liability such as penalties and surcharge.[158]

On a final note, although the *Kintanar* rulings were promulgated before the effectivity of the 2019 Revised Rules on Evidence, the amendment still lacks any provision of law that would allow the application of the Doctrine. It must be observed that Section 6 of Rule 131[159] further strengthens the argument that the guilt of the accused, even if based on a presumed fact, must be proved beyond reasonable doubt. As a result of this amendment, the Doctrine has no place in any criminal proceeding in Philippine courts. This amendment finds its origin in Rule 303 in the initial proposal of the US Federal Rules of Evidence.[160] The relevant provision under Rule 131 provides:

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[155] People v. Manabat, G.R. No. 242947, 909 SCRA 543, 571, July 17, 2019.

[156] Mark Winings, *Ignorance Is Bliss, Especially for the Tax Evader*, 84 J. CRIM. L. & CRIMINOLOGY 575, 578 (1993).

[157] *See* Skarlatos, *supra* note 48.

[158] TAX CODE, § 248.

[159] RULES OF COURT, Rule 131, § 6.

[160] *A Practitioner's Guide to the Federal Rules of Evidence*, 10 U. RICH L. REV. 169, 170 n.5 (1975). As opposed to the Philippine Revised Rules on Evidence, this rule was deleted in the final version of the US Federal Rules on Evidence. The rule expressly forbade the judge to

> SECTION 6. *Presumption against an Accused in Criminal Cases.* — If a presumed fact that establishes guilt, is an element of the offense charged, or negates a defense, the existence of the *basic fact must be proved beyond reasonable doubt* and the presumed fact follows from the basic fact beyond reasonable doubt.[161]

The above-quoted provision must be interpreted in relation to the provisions on circumstantial evidence and the conclusive and disputable presumptions enumerated in the Revised Rules on Evidence.[162] McCormick[163] goes into detail on the principal differences between these two presumptions. Where a conclusive presumption is used, the defendant may be convicted based on the presumption alone as the result of the failure of the accused to introduce proof to the contrary. On the other hand, under disputable presumptions, the jury (in the US) is merely instructed that it *may*, but not necessarily, find the defendant guilty based on the basic fact proved. Thus, if a basic fact, standing alone, is unable to produce an inference of guilt of the accused, such will be deemed unconstitutional.[164]

The conclusive presumptions under Section 2, Rule 131[165] of the Rules of Court are based on the principle of estoppel. Under this rule, the prosecution can only determine a taxpayer's willfulness to commit a tax crime when the latter is estopped from denying his intent or knowledge of an incriminating fact due to his own declaration, acts, or conduct.[166] Thus, a conclusive presumption requires knowledge itself, as opposed to the Doctrine, which replaces the "knowledge" requisite with merely "a high probability of knowing" by the accused.[167] In *Kalalo v. Luz*,[168] the Supreme Court held that actual or constructive knowledge must be established for a party to be estopped.[169] The Court said:

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direct the jury to find a presumed fact against the accused unless the presumed fact established guilt or an element of the offense and the same was proven beyond reasonable doubt.

[161] RULES OF COURT, Rule 131, § 6. (Emphasis supplied.)

[162] Rule 131, §§ 2–3.

[163] MCCORMICK ON EVIDENCE (Kenneth Broun, ed., 6th ed. 2007), *citing* Cty. Court of Ulster County v. Allen, 442 US 140 (1979). McCormick denotes conclusive presumptions as mandatory presumptions, whereas disputable is termed as permissive presumptions.

[164] *Id.*

[165] RULES OF COURT, Rule 131, § 2.

[166] RULES OF COURT, Rule 131, § 2(a).

[167] *See* Robbins, *supra* note 36.

[168] G.R. No. L-27782, 34 SCRA 337, July 31, 1970.

[169] *Id.* at 347.

> The essential elements of estoppel *in pais* may be considered in relation to the party sought to be estopped, and in relation to the party invoking the estoppel in his favor. As related to the party to be estopped, the essential elements are: (1) conduct amounting to false representation or concealment of material facts or at least calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) intent, or at least expectation that this conduct shall be acted upon by, or at least influence, the other party; and (3) *knowledge, actual or constructive, of the real facts*. As related to the party claiming the estoppel, the essential elements are (1) lack of knowledge and of the means of knowledge of the truth as the facts in question; (2), reliance, in good faith, upon the conduct or statements of the party to be estopped; (3) action or inaction based thereon of such character as to change the position or status of the party claiming the estoppel, to his injury, detriment or prejudice.[170]

Conversely, it can be argued that an accused-taxpayer can be convicted for willfully violating the Tax Code under the following disputable presumptions: (1) that an unlawful act was done with an unlawful intent;[171] (2) that a person intends the ordinary consequences of his or her voluntary act;[172] and (3) that a person takes ordinary care of his or her concerns.[173] Under these presumptions, the legislature essentially considers certain facts, after being proved beyond reasonable doubt, as constituting *prima facie* evidence of the existence of guilt, provided that there is "a rational connection between the facts proved and the ultimate fact presumed, so that the inference of the one from proof of the others is not unreasonable and arbitrary because of lack of connection between the two in common experience."[174] Granted that the prosecution must prove a disputable presumption beyond reasonable doubt,[175] there is no further need to apply the Doctrine.

By itself, the Revised Rules on Evidence also provides disputable presumptions that may be used as a defense for accused-taxpayers, such as: (1) a person is innocent of crime or wrong;[176] (2) the ordinary course of business has been followed;[177] and (3) the law has been obeyed.[178]

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[170] *Id.* (Emphasis supplied.)
[171] RULES OF COURT, Rule 131, § 3(b).
[172] Rule 131, § 3(c).
[173] Rule 131, § 3(d).
[174] Vallarta v. Ct. of Appeals, G.R. No. L-40195, 150 SCRA 336, 344, May 29, 1987.
[175] RULES OF COURT, Rule 131, § 6.
[176] Rule 131, § 3(a).
[177] Rule 131, § 3(q).
[178] Rule 131, § 3(ff).

Nevertheless, when there are two or more contradicting presumptions in a particular case and the evidence presented is within reasonable doubt, it must be resolved in favor of the presumption of innocence. Thus, the Supreme Court ruled in *People v. Godoy*:[179]

> It frequently happens that in a particular case two or more presumptions are involved. Sometimes the presumptions conflict, one tending to demonstrate the guilt of the accused and the other his innocence. In such case, *it is necessary to examine the basis for each presumption and determine what logical or social basis exists for each presumption, and then determine which should be regarded as the more important and entitled to prevail over the other.* It must, however, be remembered that the existence of a presumption indicating guilt does not in itself destroy the presumption against innocence unless the inculpating presumption, together with all of the evidence, or lack of any evidence or explanation, is sufficient to overcome the presumption of innocence by proving the defendant's guilt beyond reasonable doubt. *Until the defendant's guilt is shown in this manner, the presumption of innocence continues.*[180]

In sum, unless the legislature enacts a law that allows the substitution of presumed knowledge for actual knowledge in tax evasion cases, the courts cannot invoke the Doctrine as a basis to establish willful intent. Otherwise, it would result in the usurpation of the legislative function of Congress. In the absence of a judicial admission of guilt by the accused taxpayer, the courts may still utilize both circumstantial evidence and the aforementioned presumptions under the Rules on Evidence to substantiate a taxpayer's willfulness to evade or defeat his or her tax obligations. It is imperative to quash this Doctrine at the onset, lest Lady Justice remain unblindfolded—resulting in the sheer disregard of the statutory and constitutional rights of the accused.

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[179] G.R. No. 115908, 250 SCRA 676, Dec. 6, 1995.

[180] *Id.* at 726-727, *citing* I RONALD ANDERSON, WHARTON'S CRIMINAL EVIDENCE 173–74 (1969 ed.). (Emphasis supplied.)