

# Tax Law for Business

*BDB Law's "Tax Law for Business" appears in the opinion section of Business Mirror every Tuesday.*

## One Person Corporations: Will this work in our Jurisdiction?

By: Atty. Ronel Andrew R. Morano

One of the great amendments brought about by the Revised Corporation Code (RCC) is the introduction of the so called "One Person Corporations". Under the RCC, a One Person Corporation (OPC) is a corporation with a single

stockholder. This means that a natural person, a trust of an estate may now form a corporation. This is a deviation from the old law that required at least 5 natural persons in order to organize a corporation. The advantage of this new



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Since the RCC wants to give MSMEs a greater chance to grow in terms of their finances, an OPC is not required to have a minimum authorized capital stock except as otherwise provided by special law. This means that capitalization should not be a problem for the MSMEs for them to establish a corporation.

law is that an individual may at anytime organize a corporation without the need to look for other incorporators to form to the corporation.

One of the reasons why the OPC was introduced is because micro, small and medium enterprises

(MSMEs) are growing in numbers but can hardly survive due to the fact that they are organized as sole-proprietorships. One of the disadvantages of such is that their creditors can go after their personal accounts up to the last centavo.



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Under the RCC, OPC shall not be required to have a minimum authorized capital stock except as otherwise provided by special law and can only be liable up to the assets or contributions of the individual to the corporation.

But RCC also provided a safeguard to the creditors of the OPC. When the single stockholder cannot prove that the property of the OPC is independent of the stockholder's personal property, the stockholder shall be jointly and severally liable for the debts and other liabilities of the OPC. The single stockholder enjoys the privilege of having a separate personality or limited liability under the OPC but has the burden of proof to show that the assets of the OPC are independent of the personal properties of the single stockholder.

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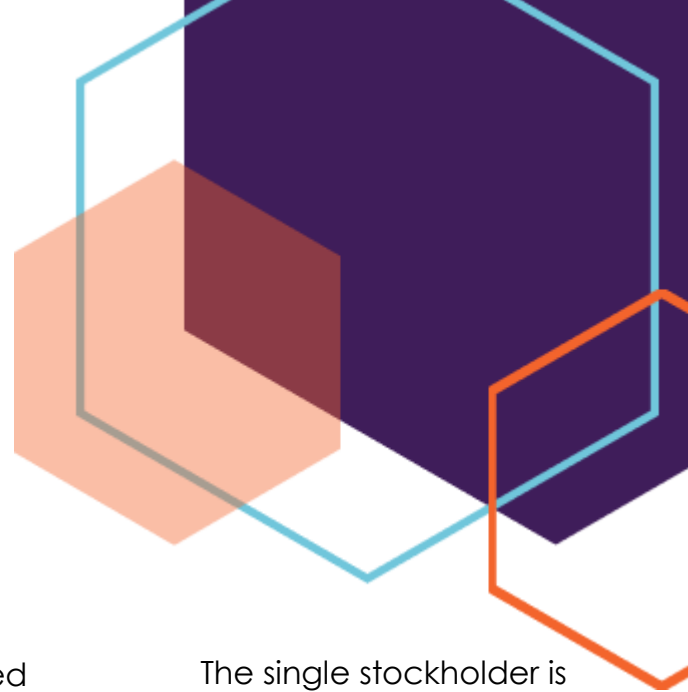
minimum authorized capital stock except as otherwise provided by special law. This means that capitalization should not be a problem for the MSMEs for them to establish a corporation.

Under the old Corporation Code, corporations are required to register with the SEC and file reportorial requirements, including Articles of Incorporation and By-Laws. Under the RCC, OPC is still required to register with the SEC, file its Articles of Incorporation but is not required to file By-Laws.

A One Person Corporation also has the following unique features. It should indicate the letters "OPC" either below or at the end of its corporate name.

The single stockholder is considered the sole director and president. The single stockholder can perform the duties of the President, Director, Treasurer and Corporate Secretary simultaneously. The single stockholder is also mandated to designate a nominee and an alternate nominee who shall, in the event of the single stockholder's death or incapacity, take the place of the single stockholder as director and shall manage the corporation's affairs.

Taxation wise, under the TRAIN Law, OPC can avail of the Optional Standard Deduction (OSD) of 40% of its gross income while sole-proprietors, as individual tax payers, can avail of the OSD of 40% based on their gross sales



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or receipts. This rule benefits the corporation, in general, as they can first deduct their cost of goods or cost of service while individual taxpayers cannot. Likewise, under the TRAIN Law, sole-proprietors as individual tax payers have the advantage on paying only eight percent (8%) based on their gross income provided their gross income does not exceed 3 million pesos. A corporation, like OPC, cannot avail of this tax regime as it is only available to individual tax

payers. The 8% GIT is in lieu of income tax, VAT and other percentage taxes while OPC can be subjected to Income tax, VAT or other percentage taxes.

Given these considerations, it remains to be seen whether OPC

will work in our country. The success or failure of the so called "One Person Corporations" is yet to be seen but I am a firm believer of the quote "All great things have small beginnings". Since this window of opportunity has been opened, we can use it to our

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