

Semiconductor industry declares support for RCEP ratification

THE Semiconductor and Electronics Industries in the Philippines Foundation, Inc. (SEIPI) said the Senate needs to ratify the Regional Comprehensive Economic Partnership (RCEP), declaring it beneficial to the industry.

SEIPI President Danilo C. Lachica said in a position paper issued on Monday that participation in the RCEP trade deal will allow industries to improve their market access, diversify their sources of raw materials, and improve trade with other participating countries.

"Due to its liberalization of trade by eliminating 90% of tariffs within member countries, active participation in RCEP will reduce the overall cost of imported materials and exported goods for the electronics industry," Mr. Lachica said.

"Being the largest trade pact representing 50% of global

manufacturing output and 70% of electronics, RCEP can provide the Philippines greater market access by increasing trade with China, Australia, New Zealand, and other Association of the Southeast Asian Nations (ASEAN) countries," he added.

RCEP, which started to come into force on Jan. 1, has been ratified by Brunei, Cambodia, Laos, Singapore, Thailand, Vietnam, Australia, China, Japan, New Zealand, and South Korea.

According to Mr. Lachica, the trade deal will also allow the Philippines to improve its competitiveness as an investment hub for the electronics industry.

"The ratification of RCEP is a big step in improving our competitiveness as an investment destination for semiconductors and electronics, most especially against our ASEAN neighbors

who are significantly doing better," Mr. Lachica said.

Mr. Lachica said foreign direct investment (FDI) may be affected if the Philippines fails to participate in the trade deal.

Citing data from the Bangko Sentral ng Pilipinas, Mr. Lachica noted that FDI net inflows rose 48.1% year on year in the 10 months to October.

"Non-ratification of the RCEP may affect these numbers by discouraging investors and deterring post-pandemic growth and recovery," Mr. Lachica said.

Mr. Lachica said RCEP will complement the provisions of Republic Act No. 11534 or the Corporate Recovery and Tax Incentives for Enterprises (CREATE) Act, which lowered corporate income tax rates and rationalized incentives.

Separately, British Chamber of Commerce Philippines Executive

Director Chris Nelson said in a television interview on Monday that the Philippines will be able to compete and not lose out on trade if it participates in RCEP.

Mr. Nelson said economic reforms such as the recent passage of amendments to the Retail Trade Liberalization Act and other pending economic bills show that the Philippines can be competitive.

"The Philippines has a very talented workforce; that is why people come. The Philippines has certain definite skillsets, and is obviously strong in certain areas," Mr. Nelson said.

"Let us not forget (that) RCEP will be a key area for FDI. I believe strongly that the Philippines can compete. I think the benefits of this much wider market are going to be much more beneficial for the Philippines," he added. — Revin Mikhael D. Ochave

Challengers invited to top bid for Mindanao coal concession areas

THE Energy department said it is seeking challengers for a bid put in by a coal trading company for seven coal blocks in northeastern Mindanao.

"This is to inform the public that the Grand Thermal Power Corp. is applying for 40-L-249, 40-L-250, 40-L-251, 40-L-252, 40-L-253, 40-L-290 and 40-L-293 Coal Blocks located in Bislig City, Surigao del Sur, and Trento, Agusan del Sur," the Department of Energy (DoE) said in its Invitation to Challenge posted on its website on Jan. 28.

Bacolod-based Grand Thermal is one of 77 coal traders accredited by the DoE as of Nov. 30. Its main coal supplier is KCAL Coal Centre, Inc., according to the department.

BusinessWorld queried the DoE for more details on the application, but it had not replied at deadline time.

The pre-submission conference was set for Feb. 3. Interested parties must pay a non-refundable P200,000 to the DoE's Treasury Division upon submission of the challenge application to the DoE Records Management Division on or before March 15. The challenge follows the procedures set in the Philippine Conventional Energy Contracting Program Guidelines.

The DoE estimates the supply of coal in 2020 was 42.476 metric tons of coal, with 69.51% of the total imported. — Marielle C. Lucenio

House approves hire motorcycle, maritime bills on third reading

THE HOUSE of Representatives on Monday approved three transportation bills, including one regulating motorcycles for hire, on third and final reading.

House Bill (HB) 1075 or the proposed Motorcycles-for-hire Act, seeks to set up a registry for motorcycles to be used for public transport and delivery services. It was approved on third reading after receiving 189 affirmative votes and no negative votes, according to the proceedings of the House, sitting in plenary session.

Two maritime measures were also approved on third reading including one which seeks to improve the competitiveness of maritime trade and another designating the Department of Transportation as the lead agency for enforcing maritime rules.

HB10575 or the proposed International Maritime Trade Act received 189 affirmative votes, while HB 10612 or the proposed International Maritime Instruments Domestication Act of The Philippines got 192 votes. — Jasper Emerald G. Tan

Energy efficiency industry wants retrofit, upgrade projects to qualify for incentives

THE ENERGY efficiency (EE) industry said it is seeking the inclusion of retrofitting and system upgrade projects in the list of investments deemed strategic in order to be eligible for fiscal incentives.

"We hope that strategic EE investments do not outrightly exclude retrofitting and system upgrades," Philippine Energy Efficiency Alliance (PE2) President Alexander D. Ablaza told BusinessWorld in a Viber message, adding that the majority of EE projects needing third-party funding are retrofits and upgrades for existing buildings and industrial facilities.

"If we exclude retrofits and upgrades from the strategic EE investment endorsement of the Department of Energy (DoE) to the Board of Investments (BoI), then the Tier III incentives would be limited to a very few green building construction and electric vehicle projects," he added.

Mr. Ablaza said any such exclusions will not help achieve the broader objective of raising

up to P12 trillion in capital to help over 33,000 designated establishments comply with their obligations under the Energy Efficiency and Conservation Act.

During a virtual meeting with the DoE, which was consulting the public on a draft department circular on Jan. 27, Mr. Ablaza reiterated his call for the DoE and BoI to consider EE projects, even those considered non-strategic, as Tier III or to be considered "critical to the structural transformation of the economy."

Energy efficiency projects involving upgrades have thus far been classified as Tier I. When reclassified under Tier III, companies with such EE projects can avail of one to two additional years of income tax holiday.

This incentive, Mr. Ablaza said, is crucial for EE projects to attract capital from third-party investors, such as energy service companies and third-party project developers. — Marielle C. Lucenio

DENR to seek removal of illegal occupants from over 100 protected areas

THE Department of Environment and Natural Resources (DENR) said it is hoping to remove illegal occupants from over 100 protected areas.

"We have taken for granted these protected areas. The perennial problem of illegal occupants is the reason why these areas are polluted and destroyed," Environment Secretary Roy A. Cimatu said in a statement.

Republic Act No. 11038 or the Expanded National Integrated Protected Areas System Act of 2018 added 94 areas to the list of locations under special government protection, bringing the number of such sites to 107.

Public lands within these protected areas are classified as national parks under the 1987 Philippine Constitution.

He said the Upper Marikina River Basin Protected Landscape will be one of the priority sites.

The department said it is planning on private security personnel

to turn away illegal occupants and may tap the Armed Forces of the Philippines and the Philippine National Police for overall security.

The law prohibits "occupying or dwelling in any public land within a protected area without clearance from the concerned Protected Area Management Board."

Violators are liable for fines of between P200,000 and P1 million or imprisonment of one to six years.

"We are expediting the complete demarcation of all legislated protected areas to set their final boundaries, along with the creation of the Protected Area Management Office or PAMO," Director Natividad Y. Bernardino of the DENR's Biodiversity Management Bureau said.

Ms. Bernardino said a current program on Protected Area Development and Management covers measures to conserve biodiversity within and adjacent to protected areas. — Luisa Maria Jacinta C. Jocsos

OPINION

Are your related party transactions at arm's length yet?

IT'S been almost two years since the Bureau of Internal Revenue (BIR) released several issuances involving updated reporting requirements for related party transactions (RPTs) and compliance with transfer pricing (TP) regulations. Since then, a lot of businesses have been anticipating how the tax authorities will be conducting audit investigations into RPTs, and whether they will be among the first ones to experience a TP audit.

While it is normal to feel anxious about matters that involve uncertainty, it helps to be equipped with at least a bit of knowledge about what to expect.

On Jan. 27, P&A Grant Thornton held a free webinar on TP concepts and documentation requirements. Here are the salient points from the webinar.

1. CONCEPT OF TRANSFER PRICING AND THE ARM'S LENGTH PRINCIPLE (ALP) TP issues occur when transactions between two or more related entities, especially those from different tax jurisdictions with different income tax rates, are entered into in a manner that is not conducted within ALP — with the apparent intent of minimizing tax payments while maintaining the same level of group profits.

The ALP states that transactions among associated enterprises should be made under comparable conditions and circumstances as transactions with an independent party. Simply stated, the material contractual terms and conditions, including the price charged, that a particular entity would agree to transact with a related party, must not differ significantly if transacted with an independent third party.

2. RPTS AND INTRA-GROUP SERVICES There is a wide variety of RPTs which in-

clude, but are not limited to, purchases or sales of goods, purchases or sales of property and other assets, rendering or receiving of services, leases, royalties, trademark, license, provision of guarantees or collateral, and loans.

RPTs also include "intra-group services" or those that are rendered by one party within the group which provide benefits for one or more other members of that same group. Some examples are services related to management, technical, purchasing, marketing, administration, distribution, and routine support services (e.g., accounting and auditing, accounts receivable and accounts payable processing, IT support, payroll and employee benefits support, general administration, legal services, staffing and recruitment, and training and employee development).

Intra-group services require an arm's length service fee to comply with the ALP. Hence, mere reimbursements at cost or without mark-up, or not charging any amount at all for these intra-group services, are not conducted at arm's length.

3. TAX-DRIVEN TRANSFER PRICING SCHEMES

Transfer pricing, per se, is not illegal nor is it discouraged. However, due to global related party transactions becoming more and more complex over the years, transfer pricing has become subject to abuse by many entities with the intent of avoiding or minimizing taxes.

Tax authorities around the world are allocating enormous resources towards TP enforcement because they suspect that companies use TP to shift profits to low-tax jurisdictions by failing to charge appropriate prices for intercompany transactions. On a global scale, TP has led to harmful tax practices which have

resulted in governments around the world losing significant tax revenue.

TP schemes are also present in intra-firm or domestic transactions with the aim of maximizing income tax incentives or tax assets of a related entity through RPTs.

4. TRANSFER PRICING METHODOLOGIES

There are five commonly-used transfer pricing methods (TPMs) in determining whether the RPTs are arm's length. These are the Comparable Uncontrolled Price (CUP) Method, Resale Price Method (RPM), Cost Plus Method (CPM), Profit Split Method (PSM), and the Transactional Net Margin Method (TNMM). While the BIR does not have a specific preference for any one of these methods, the regulations require that the TPM that produces the most reliable results should be used depending on the available data and present circumstances.

5. SUBSTANCE OVER FORM

Just like how this concept applies to accounting standards, TP also gives more importance to the substance or the actual nature of an RPT over any documentation that otherwise provides for its supposed characteristics. In conducting a TP analysis, consistency must be established between the material terms and conditions as stated in contracts or agreements supporting the RPTs with the facts and conditions as per the actual conduct of the transaction by the contracting parties. Any significant differences may provide room for the tax authority to assume that the RPT was entered into without a commercially rational purpose. Consequently, the tax authority may re-characterize the RPT involved and impose a corresponding tax penalty if it is proven that the misrepresentation of the RPT resulted in improper reporting of a taxable event.

6. LOSSES

Operating losses are normal for businesses, especially during challenging times like these. However, reporting consistent losses might cast doubt on the part of the tax authorities as to the actual purpose and intent of the entity's existence. The risk of being investigated would be even greater if the entity is involved in several RPTs.

In determining whether operating losses incurred are commercially acceptable, it is important to ensure that RPTs entered into are commercially realistic and make economic sense. Therefore, a taxpayer with RPTs needs to establish or justify that the losses it incurred are commercial in nature and not merely because of an RPT. Maintaining documentation which clearly outlines the non-TP factors that have contributed to the losses is therefore beneficial for a taxpayer in providing support for any questions that may be raised by the tax authorities.

In terms of justifying operating losses due to the adverse impact of the COVID-19 pandemic, taxpayers are advised to maintain relevant reports and documents, among others.

7. TRANSFER PRICING DOCUMENTATION (TPD) REQUIREMENT

Under current regulations, there are only several taxpayers explicitly required to comply with the requirements for maintaining TPD. However, nothing prevents any taxpayer from preparing TPD and presenting the same during a tax audit. Though not required to prepare TPD, the taxpayer must still present sufficient evidence to prove that their RPTs were conducted at arm's length.

Preparing TPD is no simple task. A wide array of information and data are needed to complete TPD, including internal information such as orga-

nization structure, nature of business of each party and RPT, and financial data. External data and information are also necessary such as research papers, articles, and publications about the industry in which the company operates, a database of comparable companies, contracts, agreements, market interest rates, credit ratings, audited financial statements, a general information sheet on comparable companies, and market prices, if any. While the BIR has probably not started doing TP audits at full scale, taxpayers should anticipate such audits soon, especially now that the tax authorities have received enough information to perform their initial TP risk assessments through the analysis of BIR Form 1709 or the Information Return on Related Party Transactions submitted by taxpayers. Instead of having a sit-and-wait mindset, taxpayers should start performing internal risk assessments on their RPTs, check compliance with the TP requirements, and be prepared to face a TP audit. It also helps to be in the know about developments in this subject matter by regularly attending tax and transfer pricing webinars, as well as to talk to experts who can give sound advice and assist taxpayers with their TP woes.

Let's Talk Tax is a weekly newspaper column of P&A Grant Thornton that aims to keep the public informed of various developments in taxation. This article is not intended to be a substitute for competent professional advice.

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