BIR adds new devices to list of COVID goods exempted from VAT

THE Bureau of Internal Revenue (BIR) said the list of pandemic goods exempt from value-added tax (VAT) has been expanded to include a new set of devices used in treating coronavirus disease 2019 (COVID-19).

In Revenue Memorandum Circular (RMC) 66 issued on May 2, the BIR endorsed a proposal from the Food and Drug Administration to grant VAT exemptions to more devices, in addition to the exemptions currently enjoyed by other products deemed vital in treating persons infected with the virus.

According to an annex to the RMC, the products included in the exempt list were air purifying respirators, negative-pressure steridomes, individual biocontaminant units, airway domes, negative-pressure respiratory systems, patient isolation transport unit devices, airborne isolation hood devices, continuous positive airway pressure circuits, intermittent positive pressure breathing devices, remote or wearable patient monitoring devices, patient isolation transport units, and symptom screening tools.

Removed from the exempt list were medical gas cylinders for oxygen as well as oxygen tanks.

The annex also clarified the exempt status of all types of ventilator.

The exemptions are authorized by the Corporate Recovery and Tax Incentives for Enterprises (CREATE) Act.

Non-exempt imported equipment and other pandemic goods are subject to 12% VAT.

According to the Department of Health's COVID and Vaccination trackers, as of May 3, the Philippines had 5,145 active infections, while as of May 2, over 68 million individuals were completely vaccinated.

Over 13 million booster shots were also administered.

Most areas in the Philippines will remain under Alert Level 1 on election day, May 9, after the government's pandemic task force extended the alert until May 15. — **Tobias Jared Tomas**

SB Corp. to offer P6-7B in loans targeting tourism, retail MSMEs

THE Small Business Corp. (SB Corp.) said it will launch a new loan program with funding of P6-7 billion designed to help sustain the recovery of micro, small, and medium enterprises (MSMEs).

The program has a target of aiding 42,000 MSMEs, SB Corp. Spokesman Robert C. Bastillo said at a Laging Handa briefing on Wednesday.

The program, known as the Resilient, Innovative and Sustainable Enterprises, Unleash your Powers (RISE UP), launches on Friday, May 6.

SB Corp. is an arm of the Department of Trade and Industry.

According to Mr. Bastillo, RISE UP will offer a multi-purpose loan for multi-sectoral MSMEs, a loan product for small retailers known as Rise Up Tindahan, and a loan product for tourism businesses known as Rise Up Turismo.

Mr. Bastillo said the loan amounts are between P10,000 and P5 million. Eligible applicants must have been in operation for at least a year.

He added that current MSME loan clients in good standing or those that have paid off their loans can borrow up to P10 million from RISE UP.

"*Pero 'yung* additional P5 million *ay meron ng* security or collateral *kasi lahat ng aming* loans *hanggang* P5 million *ay walang* collateral (Amounts exceeding P5 million have to be backed by collateral. All loans up to P5 million are unsecured)," Mr. Bastillo said.

Mr. Bastillo said RISE UP follows up on the Bayanihan CARES financing program, launched to aid small businesses affected by the pandemic.

TIRACHARDZ -FREEPIK

RISE UP follows up on the Bayanihan CARES financing program, launched to aid small businesses affected by the pandemic.

According to the SB Corp. website, Turismo loans are capped at P3 million unless backed by financial statements filed with the Bureau of Internal Revenue, in which case the maximum loan is up to 15% of the prior year's sales. Loans taken on to purchase assets are capped at 50% of the value of existing assets and up to 80% of the new asset's purchase price.

Turismo loans charged a 4-8% service fee depending on repayment terms, in lieu of interest. The loan is payable monthly up to four years.

Multi-purpose loans are capped at P300,000, subject to a 20% ceiling set by the value of existing business assets. They are payable in monthly instalments up to three years at an interest rate of 12%.

The website contained no information on Tindahan loans. — **Revin Mikhael D. Ochave**

MPIC stake decision on LRT-1 to hinge on election outcome

METRO PACIFIC Investments Corp. (MPIC) said on Wednesday that it is considering an increased stake in Light Rail Manila Corp. (LRMC), operator of Light Rail Transit Line 1 (LRT-1), though a final decision will depend on the outcome of the May 9 elections.

Its partner in LRT-1, Ayala Corp., has expressed an intention to divest.

"We are looking at it... but it will depend on the outcome of the elections actually, (as) we need to understand what the new President might expect from LRT-1 because we have pending applications for tariff adjustments," MPIC Chairman Manuel V. Pangilinan said during a briefing.

"We have spent quite a bit of money to rehabilitate the existing system of LRT-1. I think starting today, the generation-4 train sets will be deployed... and we have started the construction of the extension of the LRT-1," he added.

LRMC is a joint venture whose members are MPIC's Metro Pacific Light Rail Corp. (MPLRC), Ayala Corp.'s AC Infrastructure Holdings Corp. (AC Infra), Sumitomo Corp., and the Philippine Investment Alliance for Infrastructure's Macquarie Investments Holdings (Philippines) PTE Ltd.

MPIC said MPLRC has "an aggregate 55% interest" in LRMC. "MPIC's effective stake in LRMC (through MPLRC) as of Dec. 31, 2021 was 35.8%," it said in its annual report.

On its website, AC Infra said it has a 35% stake in the joint venture.

"I think the tariff adjustments are about 36% behind of what they should be, and we have actually given applications for the last three adjustments," LRMC President and Chief Executive Officer Juan F. Alfonso said at the briefing.

"The group has continued to build the Cavite extension despite the pandemic," he added.

The company said the generation-4 trains will start running along the LRT line 1 beginning on Wednesday night, May 4, and thereafter, during off-peak hours and weekends to demonstrate reliability and performance including their compliance with the technical and operational requirements.

Its target for the commercial use of the first generation-4 train set is by the end of May.

Last week, the Ayala group said in a statement: "To realize the remainder of our target, we are working on divesting our remaining thermal assets, our interest in the LRT-1, and some of our non-core businesses."

The group aims to reconfigure its portfolio "with an increased focus on value realization to fund future investments and strengthen (its) balance sheet, targeting to raise $1 billion in proceeds by 2023."

MPIC is one of three Philippine subsidiaries of Hong Kong's First Pacific Co. Ltd., the others being PLDT, Inc. and Philex Mining Corp. Hastings Holdings, Inc., a unit of PLDT Beneficial Trust Fund subsidiary MediaQuest Holdings, Inc., maintains an interest in *BusinessWorld* through the Philippine Star Group, which it controls. — **Arjay L. Balinbin**

PHL, South Korea exchange loan documents on Panay-Guimaras-Negros bridge study funding

THE Department of Finance (DoF) said the Philippines has exchanged loan documents with the Korea-Economic Development and Cooperation Fund to finance preliminary studies on the Panay-Guimaras-Negros Island Bridges Project.

In a statement on Wednesday, the DoF said Finance Secretary Carlos G. Dominguez III represented the Philippines in the document exchange. The $56.6-million loan, the agreement for which was signed last month, will fund preliminary design, detailed engineering design, and procurement assistance activities.

The bridges project "involves the construction of two sea-crossing, four-lane bridges spanning 32.47-kilometers (km) combined — including connecting roads and interchanges — that will connect the islands of Panay, Guimaras and Negros in Western Visayas," the DoF said.

The project is a component of the government's "Build, Build, Build" infrastructure program.

The 40-year loan charges zero interest, but collects a 0.1% service charge per disbursement. The lender has granted a 10-year grace period.

Construction of the bridge project, which will cost an estimated P187.54 billion, is expected to start by 2025, with engineering services to begin sometime this year.

In a separate statement, on Wednesday, the DoF said Mr. Dominguez, who is in Tokyo, raised the possibility of further loans from the Japan International Cooperation Agency (JICA) to fund the Philippines' climate adaption and mitigation projects.

Mr. Dominguez discussed the prospects of such financing at a meeting with Outgoing JICA President Akihiko Tanaka and his successor, Shinichi Kitaoka.

"Mr. Tanaka expressed his openness to Secretary Dominguez's proposal and said JICA would be willing to explore climate projects in the Philippines targeting specific localities and addressing climate change-related threats," the DoF said.

A study by the Department of Energy and the World Bank indicates the potential for 21 gigawatts of offshore wind power in the Philippines by 2040, which would account for a projected 21% of energy capacity. — **Tobias Jared Tomas**

OPINION

Tax incentives for educational institutions: Are they finally right?

TAXWISE OR OTHERWISE
DOROTHY JANE PUGUON

Election day is fast approaching. On Monday, registered voters will be choosing executive and legislative officials who will be serving for the next three to six years. Taking heed of the old election slogan "Vote wisely," my list includes candidates with education reform as part of their advocacy. As stated in this column by my colleague last year, education is unarguably one of the greatest pillars of a strong and stable nation. It's of some relevance, then, to examine how our policymakers dealt with tax regulations on proprietary educational institutions (PEIs) when they issued Revenue Regulations (RR) No. 3-2022.

As a brief refresher: Congress recently passed massive tax reforms like the Corporate Recovery and Tax Incentives for Enterprises (CREATE) Act. Among the changes introduced was the grant of a 1% preferential corporate income tax (PCIT) rate for PEIs and nonprofit hospitals, effective from July 1, 2020 to June 30, 2023. When the tax man released the implementing rules and regulations (RR No. 5-2021), PEIs were left distraught because the promised tax relief tax relief, in the form of the 1% PCIT, proved elusive. RR No. 5-2021 defined PEIs as *nonprofit* private schools, which is seemingly a contradiction — being proprietary logically means that such private schools operate for profit. As long as this ruling stood, PEIs were unable to avail of the 1% PCIT.

The controversy stemmed from the incorrect interpretation of Section 27(B) of the Tax Code, such that *nonprofit* was made applicable to both hospitals and PEIs. Thankfully, the tax man issued immediate corrective measures by suspending the implementation of the RR No. 5-2021 provisions relating to "nonprofit" PEIs.

To prevent further confusion, Congress passed Republic Act (RA) No. 11635 in December 2021 to further amend Section 27(B). Now worded, Section 27(B) applies to "hospitals which are nonprofit *and proprietary educational institutions*." To this end, RR No. 3-2022 was issued as the implementing regulation for the amended Section 27(B).

Under the recent RR, PEIs refer to "any private school(s) maintained and administered by private individuals or groups, with an issued permit to operate from the Department of Education (DepEd) or the Commission of Higher Education (CHED) or the Technical Education and Skills Development Authority (TESDA), as the case may be, in accordance with existing laws and regulations." The definition of PEIs now excludes the word *nonprofit*, rightfully so, if I may add. It also reiterated that PEIs and nonprofit hospitals are subject to PCIT of 10% on their taxable income, or a lower rate of 1% beginning 1 July 2020 to 30 June 2023. The 10% (or 1%) PCIT is on the condition that the PEIs' and nonprofit hospitals' gross income from unrelated trade, business, or other activities does not exceed 50% of their total gross income from all sources. Otherwise, if the threshold is breached, the regular corporate income tax (RCIT) of 25% will apply to their entire taxable income.

While the conundrum over PEIs' entitlement to PCIT has been finally and completely resolved under RR No. 3-2022, it is worth noting that other pronouncements of the RR created new areas of concern.

First, the coverage of the 10% (and 1%) PCIT was expanded to include nonstock nonprofit (NSNP) educational institutions whose net income or assets accrue/inure to or benefit any member or specific person (or with "income inurement" benefit). For several reasons, it is undue legislation of the Tax Code and RA No. 11635.

Section 27(B) specifically mentioned PEIs and nonprofit hospitals *only*. The expansion in coverage thus constitutes an undue delegation of legislative power, altering Congressional intentions of the law. Further, under Article XIV Section 4(3) of the 1987 Constitution, all revenue and assets of NSNP educational institutions in so far as they are **used *actually, directly, and exclusively*** for educational purposes shall be exempt from taxes and duties. The entitlement to tax exemption depends on how the revenue is used. If the *actual, direct, and exclusive* use criteria are not met, the RCIT should apply to such revenue absent any other legislation providing tax exemptions or other tax incentives. Then, there is no authority or basis for the RR to extend the PCIT to NSNP educational institutions, even if such incentive is limited to those with income inurement benefit only. It also bears mentioning that *nonstock nonprofit* is inconsistent with *income inurement*. Under the Revised Corporation Code, to be a "nonstock" corporation, no part of its income must be distributed as dividends to its members, trustees, or officers. Following this, an NSNP educational institution cannot have an "income inurement" benefit, as the former negates the latter.

Second, RR No. 3-2022 states that if the ratio of gross income from unrelated trade, business, or other activity to total gross income exceeds 50%, the 25% RCIT applies to the entire taxable income. Whereas Section 27(B) of the Tax Code provides that, in such a case, the tax prescribed under Section 27(A) will apply. Under subsection (A), a lower RCIT rate of 20% is available to corporations with net taxable income not exceeding P5 million and with total assets not exceeding P100 million, excluding land on which the office, plant, and equipment are situated. By explicitly mentioning the "25% regular corporate income tax rate prescribed under Section 27(A)", it thus appears that the lower 20% RCIT is not made available to PEIs and nonprofit hospitals, exceeding the allowable gross income ratio.

Respectfully, I urge our tax authorities to revisit the above provisions of RR No. 3-2022, having modified or expanded the laws for their implementation.

On a positive note, with the release of RR No. 3-2022, PEIs may breathe easy and find solace that the PCIT, which they're entitled to by legislative intent and declaration, can now be availed of without apprehensions. Nonetheless, it is with the hope that the tax man will likewise revisit the regulation to issue the necessary clarifications on the PCIT of NSNP educational institutions and the lower 20% RCIT for PEIs and nonprofit hospitals.

The views or opinions expressed in this article are solely those of the author and do not necessarily represent those of Isla Lipana & Co. The content is for general information purposes only, and should not be used as a substitute for specific advice.

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