Petition to hike taxi flag-down rate awaiting LTFRB decision

By Arjay L. Balinbin
Senior Reporter

TAXI OPERATORS said they are awaiting a decision from the Land Transportation Franchising and Regulatory Board (LTFRB) on their petition to increase the flag-down rate to P60 from the current P40.

Jesus Manuel C. Suntay, president of the Philippine National Taxi Operators Association, said in a phone interview on Friday: "We're waiting for the resolution."

"The last hearing took place maybe around two weeks ago," he added.

The petition is now "up for resolution," an LTFRB representative said in a phone message on Friday, relaying Chairperson Cheloy Velicaria-Garafil's response to a *BusinessWorld* query.

Mr. Suntay said a flag down increase is urgent because fuel prices continue to rise.

Oil companies are expected to increase fuel prices this week, according to Rodela I. Romero, Assistant Director of the Department of Energy's Oil Industry Management Bureau, said during a Palace briefing on Friday.

She said gasoline prices could rise by "more than P1" per liter, while diesel and kerosene prices could increase "by P5" per liter.

On Monday, Cleanfuel said it will implement starting on Tuesday a price increase of P1.40 per liter for gasoline and P6.10 per liter for diesel.

Mr. Suntay said that taxi drivers and operators continue to struggle despite the reopening of the economy, which resulted in the relaxation of travel restrictions.

"*Nagkaroon ka nga ng pasahero pero 'yung* cost of operating — *'yung* fuel cost — is still high, so *wala ring kikitain* (Passengers have returned but the cost of operating — mainly fuel — is still high, so there are no earnings," he said.

According to the LTFRB, the number of active taxis plunged to 27,934 units as of October 2021 from the 50,059 taxis before the lockdown was imposed in mid-March 2020.

As of March 2022, Mr. Suntay estimated there were only around 16,000 active taxis in Metro Manila.

He said many fleet operators have sold their units in the face of pandemic restrictions and a shortage of drivers.

He said the LTFRB has responded slowly to the industry's appeal for a higher flag-down rate.

"That's the problem when the appointed officials do not come from the transport industry... We keep on appointing people who do not come from the transport industry and do not know what the industry needs," Mr. Suntay said.

'NEW BURDEN'

The No Contact Apprehension Program (NCAP) in force in the capital region is another burden for the taxi operators, according to Mr. Suntay.

"*Dapat babaan 'yung* fines *kasi ang nangyayari sa* transport industry, *kapag nag*-violate *ang* driver, *ang pini*-pin *nila ay ang* operator, *hindi 'yung* driver (Fines should be lowered, because if a driver violates the rules, the responsibility lies with the operator, not the driver," Mr. Suntay said.

"By the time *na dumating 'yung* notice of violation, *wala na 'yung* driver, so *ngayon ang* operator is left with all the penalties (When the notice of violation arrives, the driver could be gone, leaving the operator with all the penalties)."

He said he has received reports from some operators who had to pay P300,000 to P400,000 in fines due to driver violations.

"Can you imagine that? It's totally unfair. That's another burden *kaya may mga* operators *na mas gusto na lang 'wag mag* -operate (that's why there are operators that would rather not operate)."

Land Transportation Office (LTO) Chief and Department of Transportation Assistant Secretary Teofilo E. Guadiz III has appealed to local government units that are implementing the NCAP to suspend and consider reviewing the policy.

LGUs can sit down with the LTO to iron out guidelines, including the complaints of operators of public utility vehicles "that they are the ones who are forced to pay the fines for traffic violations committed by their drivers," the agency said in a statement on Aug. 9.

Asked to comment, Ariel E. Inton, a former board member of the LTFRB, said that the policy adds to the clamor of taxi operators to increase the flag-down rate.

"Hardest hit *sila ng* NCAP *kaya talagang may* clamor (They have been hit hardest by NCAP, which is why there is a clamor)," he said in a phone interview.

Mining bill expected to raise gov't revenue but poses risk to FDI growth

By Luisa Maria Jacinta C. Jocson *Reporter*

THE proposed new fiscal regime to govern the mining sector is expected to strengthen the position of responsible miners and benefit the government, which will receive a fairer share of the revenue generated by the industry, analysts said, though miners warned that investors may elect to go elsewhere as a result.

"The new fiscal regime may benefit the government more as it aims for simplification and fair share, more so as policy makers look to achieve fiscal consolidation over the course of the several years without necessarily burdening other revenue sources," Security Bank Corp.'s Chief Economist Robert Dan J. Roces said in an e-mail.

"As such, this will help manage and stabilize the high fiscal and debt-to-GDP ratios on top of economic recovery," he added.

The House of Representatives' Committee on Ways and Means last week approved a new fiscal regime which raises the tax rate on the mining sector to 51% from 38%.

The measure aims to increase government revenue from mining to P37.5 billion in its first full year of implementation.

Under the proposal, a royalty of 5% will be imposed on the market value of gross output of large-scale mining operations.

A minimum government share of 60% of net mining revenue, including all taxes and charges, will also be imposed on all mining operations.

A 10% export tax will also be levied on the market value of mineral ore exports to encourage domestic ore processing.

The bill also proposes a government system for the public disclosure of all mining tax and revenue data in the extractive industries value chain.

Eleanor L. Roque, head of the Tax Advisory and Compliance Division of P&A Grant Thornton, said that fiscal rationalization will promote transparency and level the playing field.

"It also minimizes the discretionary powers on the taxes and charges that can be imposed on a particular contract. I think it will encourage responsible and conscientious miners. Although mining as an industry is potentially a huge source of revenue for the government, we should still be very cautious and prudent to ensure that we are getting the most benefit from this industry. These are our natural resources. Once mined, we can never get them back so maximizing benefits for our country should also be a major consideration," she said in an e-mail.

She said the Philippines should export high-value products which have already been processed.

"In most cases, the products we export have low value because the important processing steps are done abroad. So, the income realized here in the Philippines is also very low which, in turn, means low government share and taxes. Then, we import those same products after they have been processed at a very high value. Encouraging the processing to be done here in the Philippines will also transfer the much-needed technology to our workers and skilled laborers," she added.

Tax Management Association of the Philippines President Fulvio D. Dawilan said that the measure will be good for both the environment and the economy.

"The accrual of the royalties paid by large-scale metallic mining operations into a Natural Resource Trust Fund is a new concept. The fund redounds to the benefit of the localities affected by the mining operations. There are therefore clear benefits to the affected local government units, including the use of the funds for the rehabilitation of abandoned mines," he said in an e-mail.

"Also, the requirement for the small-scale miners to get tax identification (numbers) as a requisite for registration with the Mines and Geosciences Bureau and Mining Boards will place them on the radar of the tax authorities. This will require them to pay their fair share of taxes on the income generated from their mining activities," he added.

Mr. Dawilan noted that assigning royalty collection duties to the Bureau of Internal Revenue (BIR) is a new move.

"This is correct as in fact the royalties paid by mining contractors are actually taxes which should be under the jurisdiction of the BIR," he added.

Stock market analysts said that the new fiscal regime will likely not impact investor appetites.

Mercantile Securities Corp. Head Trader Jeff Radley C. See said in a Viber message that the mining industry anticipated these changes as the government needed more money.

FULL STORY

Read the full story by scanning the QR code with your smartphone or by typing the link
<bit.ly/Mining083022>

2040 capacity target for new-build renewables set at 52,826 megawatts

THE Department of Energy (DoE) said it has set a target of 52,826 megawatts (MW) of additional renewable energy (RE) capacity by 2040 or seven times the current level.

Marissa P. Cerezo, director of the Renewable Energy Management Bureau, said at a briefing led by the Center for Energy, Ecology, and Development on Saturday that solar energy will account for 51.5% or 27,162 MW of the targeted new construction.

Ms. Cerezo added that wind will account for 16,650 MW with the remainder consisting of hydro, geothermal, and biomass.

"The basis of this figures are the projects we have now registered at the department. These projects are at different stages, (and the projections are weighted towards) those that are in the development stage that are already undergoing construction," Ms. Cerezo added.

Currently, RE capacity is 7,914 MW. In 2021, RE accounted for 29% of the power capacity mix and 22% of gross power generated. Coal accounted for the biggest share of installed capacity and power generation at 44% and 58% respectively.

The DoE is also looking to address the intermittency issues for the various forms of RE such as solar and wind, by enhancing weather forecasting system, according to Ms. Cerezo.

In the DoE's energy plan, the department is looking to increase the share of RE to 35% by 2030 and to 50% by 2040. — **Ashley Erika O. Jose**

Feed-dependent industries urge more budget support for yellow corn production

INDUSTRIES dependent on animal feed called on the government to raise its budget allocation for raising corn output, saying corn scarcity will have a follow-on effect on meat, fish, and poultry prices.

"There should be more funding for yellow corn production as it is the main ingredient for the feed of our main protein sources (such as) poultry, livestock, and aquaculture. The same reasoning goes for fruit and vegetables," United Broiler Raisers Association President Elias Jose M. Inciong said in a Viber message.

"Considering only the budget numbers, one can say the budget is still rice-centric after all these years and despite the funds from the Rice Tariffication Law. Rice is for the carbohydrate needs of our people," he added.

In the proposed 2023 budget, the Department of Agriculture (DA) will receive P102.15 billion, up 44%, according to a statement issued by Deputy Speaker and Batangas Rep. Ralph G. Recto on Sunday.

"It took a sitting President to concurrently serve as Agriculture Secretary for the DA to finally reap a budget increase," Mr. Recto said, referring to President Ferdinand Marcos, Jr.'s decision to appoint himself head of the DA. — **Luisa Maria Jacinta C. Jocson**

FULL STORY

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OPINION

How FAR are you in transfer pricing documentation?

LET'S TALK TAX
MARIE FE F. DANGIWAN

(First of a series)

Transfer Pricing (TP) compliance is still relatively new for most taxpayers, even though the Bureau of Internal Revenue (BIR) first released TP regulations in 2013 followed by a series of issuances between 2019 and 2021.

Compliant or not, I do observe though that taxpayers are pretty much aware of the principles of TP and the objective of BIR in requiring TP compliance. That is, controlled transactions with related parties are carried out in the same manner as those of third parties (referred to as the Arm's-Length Principle or the ALP) to prevent loss of tax revenue for the government.

One of the TP compliance items is the preparation of Transfer Pricing Documentation (TPD) which is required for certain identified taxpayers. Despite awareness of the requirement, some taxpayers have not come around to preparing their TPD. I guess their reason could be the dearth of TP audits by the BIR, unlike regular tax audits, so why bother? Another reason could be limited resources or knowledge in preparing TPD.

With or without TP audits, it is best to start preparing TPD because having one helps taxpayers make better business decisions. One of the components of a TPD is the Function, Assets, and Risks or FAR analysis. I will provide some guidelines in preparing FAR analyses in accordance with Revenue Regulations (RR) No. 2-2013 and Revenue Audit Memorandum Order (RAMO) No. 1-2019.

WHAT IS FAR ANALYSIS?

ALP is based on a comparison of the prices or margins adopted or obtained by related parties with those adopted or obtained by independent parties engaged in similar transactions. One of the factors affecting comparability is the FAR.

The price or margin normally reflects and correlates to the function of the business, the assets or investments utilized, and risks assumed on producing/distributing the products or rendering the services. For instance, an entity selling a product with a warranty should earn a higher return or price compared to another entity selling the same product without the provision of warranty. The difference in margin is due to the additional function performed and risk borne by the first entity. Likewise, a product with reputable branding is expected to fetch a higher return or price compared to that of a similar product without the branding, due to the additional asset (in this case, trademark) employed in enhancing the value of the product.

An example is a Business Process Outsourcing (BPO) entity that is engaged in business development, generating and maintaining its own clients through its selling and marketing activities. Such a company is expected to earn a higher return compared to a BPO that merely provides routine support to a parent company or is subcontracted by the parent company to service clients. Likewise, a mobile game developer with significant investments in software that hires highly experienced engineers to enhance the visual and audio effects of a game is expected to earn a higher return compared to a game developer having none or fewer of these assets. The difference in return is due to the additional functions performed, assets employed, and risks borne by the first entity.

WHY IS FAR ANALYSIS IMPORTANT?

FAR analysis is performed to accurately identify the characteristics of the taxpayer's business as well of their counterparts. These allow a picture of how proportional the risks the company is bearing and the profit it is generating. For instance, the level of return of a full-fledged manufacturer cannot be compared to a toll or contract manufacturer because the latter has generally fewer functions, assets, and risks. Likewise, the level of return of a full-fledged distributor cannot be compared to a limited-risk distributor or sales agents.

It is only when the proper FAR analysis and characterization is conducted that we can perform meaningful comparisons of the price or level of income of entities in a controlled transaction against the price or level of return in a similar independent transaction.

HOW IS FAR ANALYSIS DONE?

FAR analysis is a mapping or gathering of the economically relevant facts and circumstances surrounding the transaction between two or more related parties if applicable, it allocates the functions, assets, and risks among the parties involved in the controlled transactions.

Typically, the FAR of each unit or division of the entity that is relevant to the controlled transaction is identified. For instance, in a manufacturing entity, the functions performed by the research and development, procurement, production, logistics, sales, marketing, and advertising, finance department, among others, are identified and documented.

The assets used in performing various functions such as land, buildings, plant, machinery, equipment, and intangible assets such as production know-how, patent of product or license of trademark, etc. should be identified and documented.

Last, an appraisal of risk is also important in determining the arm's length price or return. The possible risks assumed that should be considered in the analysis include market risk, risk of change in cost, price or stock, risk relating to the success or failure of research and development, financial risk such as changes in foreign exchange and interest rates, credit risk, etc.

In practice, one cannot be expected to compare all functions, assets, and risks. Hence, it must be emphasized that only functions, risks, and assets that are economically significant in determining the value of transactions or margins of entities should be identified and compared.

WHERE DO WE GET THE INFORMATION?

The source documents for compiling information relevant to the FAR analysis are readily available from within the company, such as annual audit reports, segmented financial statements, organizational charts and/or group structure, the list of all employees with related job descriptions and the authority of relevant employees, the product or service flow manual, pricing policies, etc.

Subsequently or as needed, interviews with the various personnel of the business units can be conducted to further understand or validate the information on hand. For example, key officers may provide the context or rationale behind entering into the affiliated transaction, validating with the finance personnel that the prices in intercompany agreements are actually followed, inspections may also be performed with the production team to verify the existence of equipment, or confirm the risk of inventory shrinkage. Again, facts are important in producing an accurate FAR analysis.

WHAT DO WE DERIVE FROM FAR ANALYSIS?

After performing the FAR analysis, one should be able to draw conclusions about the characteristics of the business. For instance, a business may be characterized as a toll manufacturer, contract manufacturer, fully-fledged manufacturer, fully-fledged distributor, limited-risk distributor, commissionaire, commission agent, service provider, and so on.

Again, such characterization is essential in finding the correct comparables which will determine an appropriate price or return received by the entity or its related parties considering the functions performed, assets used, and risks borne by each party.

HOW FAR ARE YOU IN TPD?

There is a saying, "So near, yet so far." In your case, start preparing the FAR analysis and you are one-fourth done in your TPD. That is to say, "So near and not so far, when FAR is done."

In the next items of our series, we will take you through the other components of the TPD. Stay tuned.

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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