

New JV rules signal government intent to assert control over tolls

By **Luisa Maria Jacinta C. Jocoson** Reporter

THE revised guidelines for joint venture (JV) agreements between government and private entities risk dampening investor sentiment but will ensure better regulation, analysts said.

"This is a positive development re-establishing a clear regulatory regime to govern public-private partnerships (PPPs). It sends a message that public utilities and services remain within the ambit of government's regulatory powers to protect the public interest," Terry L. Ridon, a public investment analyst and convener of think tank InfraWatch PH, said in an e-mail.

"This may reduce the private sector's appetite to participate in PPPs, but the government is putting its foot down to ensure that the public will not be subjected to exorbitant fees and charges," he added.

The National Economic and Development Authority (NEDA) recently released the revised guidelines for JV agreements between the government and private entities.

One of the major changes under the revised guidelines is that tolls, fees, rentals, tariffs and charges that a JV may collect for the use or availing of a facility or service will be subject to the approval of the appropriate regulatory body, as provided by the law.

In the previous version of the guidelines, joint venture agreements may designate a formula to guide the adjustment of tolls, fees, rentals, and charges.

"The tolls, fees, rentals, tariffs, and charges may be subject to adjustment during the life of the JV agreement, based on an approved formula/adjustment schedule in the approved JV agreement," according to the new guidelines.

The agency or local government unit involved must also secure the advice of the regulatory body or a green light from the approving authority, or both, for the formula.

"The monitoring of the consistency of the proposed adjustments of tolls, fees, rentals, tariffs, and charges with the prescribed rate of return, if any, shall be undertaken by the appropriate regulatory body or the government entity," it added.

Mr. Ridon said that as the government contributes assets and resources into these projects, it is

"well within its authority to assert its regulatory powers in these projects."

"The approval of regulatory fees is in order, because tolls and fees, unlike taxes, are intended to be temporary, meaning once the cost intended to be recovered has been served, then such tolls and fees may be reduced if not totally eliminated, so regulating should include monitoring too," Antonio A. Ligon, a professor of law and business at De La Salle University, said in a Viber message.

On the other hand, Mr. Ligon said that the revised guidelines will not be a "big issue" for the private sector.

"What is important is parties agree to comply with existing rules and regulations in line with their objective of accomplishing their venture. It's timely that parties in the JVs are made conscious and compliant," he said.

Rizal Commercial Banking Corp. Chief Economist Michael L. Ricafort said that apart from the need for regulatory approvals, investors are also looking for "greater certainty" in JVs for more predictable investment returns.

"(This serves as a) basis for them to become more decisive in view of other alternative investment options available for them locally and overseas; as well as the need for the government to have more diversified investors and funding for the country's various infrastructure projects," he said in a Viber message.

The guidelines came into effect on April 25. They were last revised in 2013.

Another new provision under the revised guidelines is that any increase that exceeds 10% of the project cost would be subject to new approvals.

"Any addition to the scope of the project that is separable from the existing scope and costs more than 10% of the original project cost shall be treated as a new project and would be subject to the approval and tendering process under the guidelines," it added.

The guidelines also do not allow the splitting of government contracts or division or breaking up government contracts into smaller quantities and amounts.

It also prohibits dividing contract implementation into artificial phases or sub-contracts to circumvent any provision or procedure under the guidelines including the approval by the NEDA Board Investment Coordination Committee.

Amended VAT zero-rating rules to boost exporters' local purchases

THE amended guidelines for value-added tax (VAT) zero-rating by economic zone locators could boost purchasing by exporters from local suppliers, the Philippine Economic Zone Authority (PEZA) said.

"With the revised guidelines, this will encourage the locators to localize their sourcing of goods and services. This will increase value adding in the country and facilitate the integration of local suppliers of goods and services into the economic zone (ecozone) value chain," PEZA Director General Tereso O. Panga told reporters via Viber on Monday.

Mr. Panga added that the amended guidelines show that the government is "serious" in implementing the Corporate

Recovery and Tax Incentives for Enterprises (CREATE) Act and attracting foreign direct investment.

"Overall, this will be a big boost to the investment promotion agencies' (IPAs) mandate and for the country as a competitive investment destination in the region," Mr. Panga said.

The Bureau of Internal Revenue (BIR) issued Revenue Regulations No. 3-2023, which amended the VAT zero-rating guidelines.

RR No. 3-2023, allows local suppliers of goods and services to registered export enterprises to forego BIR approval for VAT zero-rating of items they provide to locators. Instead, their VAT zero-rating may be claimed

on the strength of certifications to be issued by IPAs such as PEZA.

The CREATE Act previously required business enterprises to prove that the local purchases of goods and services are directly and exclusively used in their registered activities in order to enjoy the VAT zero-rating. Otherwise, these would be subject to 12% VAT.

Mr. Panga said that locators faced higher costs prior to the BIR issuance due to the limited goods and services covered under the VAT zero-rating incentive.

"This prompted some locators to outsource their service requirements abroad to avoid exposure to VAT. Some locators have resorted to importing their

materials as it is easier to avail of tax- and duty-free incentive than sourcing them from the local market given the grey area in BIR's definitions for direct and exclusive use in a registered activity," Mr. Panga said.

The BIR regulation also specified six items that cannot be deemed directly or exclusively used in the registered project or the registered export enterprise, to encourage more sourcing from domestic suppliers.

These are janitorial services, security services, financial services, consultancy services, marketing promotion, and services rendered for administrative operations such as human resources, legal, and accounting. — **Revin Mikhael D. Ochave**

Enriched copra meal production for animal feed targeted for Q4

THE Department of Agriculture said it has set a fourth-quarter target for commencing commercial production of protein-enriched copra meal (PECM) to reduce the need to import animal feed.

"It aims to replace feed, particularly soya. We import a lot of soya. Soya is around 20-40% of the feed ratio," National Livestock Program (NLP) Director Ruth S. Sonaco told reporters last week.

"If we can replace it with protein-enriched copra meal, there would be a huge difference in feed cost, around 40% less," she added.

Copra meal is a by-product of the coconut oil extraction process.

The United States Department of Agriculture projected Philippine imports of soybean meal at 2.90 million metric tons (MT) this year, up from an initial forecast of 2.87 MT.

Copra meal production is expected to decline to 1 million MT from 1.13 MT in the previous year due to falling copra output.

Prices of feed grain have been affected due to the Russia-Ukraine war. The two countries are among the top suppliers of feed grains.

"The DA perceives PECM as a possible avenue (for easing) the pressure brought by feed inflation, and thereby cushion the effects of unprecedented feed cost spikes on small, medium to large scale farmers," the department said in memorandum circular.

According to Ms. Sonaco, the construction of two production facilities is ongoing in Batangas and North Cotabato, targeted for completion within the next two quarters.

Each facility has a budget of P50 million while another two facilities are set to be established next year, she said.



PKFUEL

In November, the Department of Budget and Management approved the allocation of P69.7 million to support the project.

POULTRY OUTLOOK

Ms. Sonaco said that the poultry industry's recovery is outpacing that of livestock.

"The recovery is easier in poultry because remember, broilers only need 28 days. Even if they are culled, poultry farms recover fast," she said.

The NLP projects chicken this year to be in surplus by about 557,000 MT, equivalent to 128 days of chicken demand.

Domestic production of chicken is expected to hit 2.08 million MT on a liveweight basis, with demand at nearly 1.6 million MT.

The Bureau of Animal Industry said six barangays currently have active cases of type H5N1 avian influenza (AI) as of April 20.

Since the first AI outbreak in January last year, the Philippines has recorded cases in 160 barangays across nine regions. — **Sheldeen Joy Talavera**

OPINION

To tax or not to tax compensation?

On May 1, 1903, the first Labor Day was celebrated in the Philippines. Thousands of workers marched from the streets of Tondo, Manila to Malacañang Palace to voice their demands for better working conditions and fair treatment from the then American-ruled administration. Fast forward one hundred and twenty years later, we are still commemorating the contributions of our labor force, which has helped build and develop the nation after years of immeasurable hard work and perseverance.

Perhaps, one of the most recurring issues raised every Labor Day is the demand for higher wages. Related to this, from the point of view of taxpayers, the amount of take-home pay received by employees,

after deducting the withholding tax on their compensation, is vital to each individual employee-taxpayer.

Thus, having an understanding of the rules and regulations surrounding what constitutes taxable and non-taxable income is crucial for employees and employers alike, to avoid disputes in determining how much tax should be deducted from taxpayers' hard-earned money.

To arrive at taxable compensation, non-taxable income is deducted from gross compensation. All forms of compensation are generally included as part of the taxable income unless they are specifically allowed by tax rules to be treated as non-taxable income.

Below are some of the more common compensation items or employee benefits and their related tax treatments.

ALLOWANCES

Fixed or variable allowances are generally considered taxable compensation. However, there are types of allowances included in the list of de minimis benefits under Revenue Regulations (RR) No. 5-2011, as updated by the Tax Reform for Acceleration and Inclusion (TRAIN) Law, which are not taxable. These non-taxable allowances consist of the following:

- P250 monthly medical allowance to dependents of employees;
- P2,000 monthly rice allowance;
- P300 monthly laundry allowance;
- P6,000 annual uniform and clothing allowance; and
- Daily meal allowance for overtime work and night/graveyard shift not exceeding 25% of the basic minimum wage.

With regard to the above daily meal allowance, the Bureau of Internal Revenue (BIR) clarified through BIR Ruling No. 544-12 that daily meal allowance not given on occasion of overtime work cannot be classified as a de minimis benefit. Hence, daily meal allowances provided to employees will be considered taxable, unless specifically intended for overtime work.

Any other allowances not included in the list of de minimis benefits, such as communication allowance, travel allowance, fuel allowance, and housing allowance, will be generally included as part of taxable compensation of employees.

Note, however, that when the allowances are provided for expenses incurred or expected to be incurred by an employee in the performance of his duties and are necessary in pursuit of the trade or business of the employer, these are not considered compensation subject to withholding tax, as long as the allowance is subject to accounting or liquidation by the employee in accordance with the substantiation requirements of Section 34 of the Tax Code, as amended.

MEDICAL ASSISTANCE

Included in the list of de minimis benefits prescribed by the BIR is actual medical assistance not exceeding P10,000 per year. Hence, any medical assistance provided within the prescribed threshold can be considered non-taxable income.

Pursuant to BIR Ruling No. 019-02, the medical assistance provided to employees must be for their own medical expenses. Further, the medical assistance must be fully substantiated with actual official receipts.

RR No. 5-2011 cited examples of medical assistance such as expenses for "medical and healthcare needs," annual executive check-up, maternity assistance, and routine consultations.

MONETIZED LEAVE

For private employees, unused vacation leave credits not exceeding 10 days converted to cash are considered non-taxable de minimis benefits during the year. Meanwhile, for government officials and employees, the monetized value of both vacation and sick leave is considered a de minimis benefit.

Hence, without specific BIR issuances/tax exemption rules, conversion to cash of other leave benefits, such as birthday

leave, bereavement leave, and emergency leave, will unfortunately be considered taxable income.

13TH MONTH PAY AND OTHER BONUSES

The mandatory 13th month pay and other additional benefits granted by employers, such as 14th month pay, performance bonus, health bonus, perfect attendance bonus, and all other types of bonus, may be considered non-taxable compensation but only up to P90,000. Any amount in excess of the P90,000 ceiling may not be allowed as deductions against gross income and forms part of the taxable income of employees.

OTHER BENEFITS SUBJECT TO P90,000 THRESHOLD

"Other benefits" considered in computing for the amount subject to the P90,000 threshold include fringe benefits provided to rank-and-file employees, benefits in excess of the de minimis thresholds, loyalty awards, and gifts given in cash or in kind. Hence, these benefits are generally considered taxable, unless the aggregate amount of 13th month pay and other benefits of the employee does not exceed the P90,000 ceiling.

Discussed above are just some of the usual benefits received by employees as hard-earned fruits of their labor. Such fruits of labor should be carefully evaluated on whether they should be taxed or not, as tax treatments certainly have an impact on the take-home pay of employees.

And as another Labor Day comes to a close, we are reminded of how vital the role of our labor force is in the development of our economy. They should be treated fairly and their compensation should be taxed or not taxed accordingly.

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WTO touts benefits of trading system for small countries

SMALLER countries stand to benefit from rules-based trading system as global trade fragments, the World Trade Organization (WTO) said.

"I think we're all relying on an open, non-discriminatory, and rules-based trading system. And specifically, smaller countries that cannot really assert themselves in a power-based trading system can benefit from that," WTO Chief Economist Ralph Ossa told reporters at a seminar in Bangkok last week.

He was asked about the impact of trade fragmentation in Southeast Asia and the Pacific.

Mr. Ossa said there are opportunities for countries in the region to host industries that are moving out of big economies like China.

"In terms of your specific region, clearly, there's an opportunity also in the sense that there are some industries moving out of China... That is what happens if countries get richer and the wages rise... Some industries move out to other destinations. So in that sense, that is an opportunity," Mr. Ossa said.

"But the big picture is that nobody really gains from this at the end of the day... You can take the small gains but should be mindful of the big risks," he added.

One of the companies that transferred some production outside of China is Apple, Inc., which announced in September that it would move its iPhone 14 production to India.

WTO Director-General Ngozi Okonjo-Iweala has said that trade fragmentation and the decoupling of the global economy into the eastern and western blocs could threaten Southeast Asia and the Pacific.

"Fragmentation would be costly for all economies, particularly poorer ones. WTO economists estimate that if the global economy decouples into two self-contained blocs, long-term global gross domestic product (GDP) would decrease by at least 5% — worse than the damage from the financial crisis of 2008-09," Ms. Okonjo-Iweala said.

"Your region, where global supply chains are an important contributor to its economic success, would no doubt be also impacted," she added.

Meanwhile, Mr. Ossa said there is currently "not much effect" so far from trade fragmentation, but added that global trade is at a "turning point."

"We do increasingly see policies put in place that kind of accelerating this fragmentation. But then when we look at the actual data and what has happened so far, we do not see that much (effect yet)," Mr. Ossa said.

"It seems that we are at a turning point. We've kind of changed course. But we haven't really sailed for long enough in that direction to really see the impact on the world economy," he added. — **Revin Mikhael D. Ochave**

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