PHL can attract EV manufacturers if market is strong, AmCham says

THE American Chamber of Commerce of the Philippines, Inc. (AmCham) said a strong domestic market may persuade electric vehicle (EV) manufacturers to set up operations here.

"You need to have the right investment climate (and) you need to have the right incentives. We gave them the incentives, now then we've got to give them the market," Ebb Hinchliffe, executive director of AmCham, told reporters last week.

"Nobody is going into the market if they don't have somebody buying the product. So, the big thing is to push the market," he added.

Incentives for EVs are laid out in Republic Act No. 11697, also known as the Electric Vehicle Industry Development Act (EVIDA).

Chapter VI of the EVIDA law requires the government to providing fiscal incentives, non-fiscal incentives, and financial assistance to help the industry and market develop.

The law authorizes incentives under the Tax Reform For Acceleration and Inclusion to eligible parties, including eight years of duty exemptions for registered participants importing charging stations in completely built unit form.

An Executive Order also modified tariffs on EVs, temporarily reducing tariffs on completely built-up EV units to 0 for five years and on certain parts and components of EVs to 1%.

"We advocated for the passing of the EV bill and we were thrilled when we got it. (However), we wanted motorcycles and other areas included and we also wanted hybrid EVs (HEVs) in it, which I think still should be in there," he said.

He said that inclusion of HEVs will push the development of the Philippine EV market.

"Right now... you'll see a lot of EV charging stations and not enough EVs. So, we really need to push now to get more and I'd love to see manufacturing of EVs here in the Philippines. We passed the bill, so we should take advantage of it," he added.

Asked about the government's plans to subsidize EV buyers, he said: "Most of the time AmCham doesn't... support subsidies because once you take them away, it hurts. Once you give them, it's hard to take them away."

"But that kind of incentive will be helpful... anything we can do to get air polluting cars off the street or air polluting jeepneys off the streets is a plus. And those subsidies will help," he added.

On Oct. 20, the Department of Trade Industry (DTI) launched the Electric Vehicle Incentives Scheme (EVIS) whichhas a target of four million locally manufactured EVs on the roads within 10 years.

The EVIS will provide incentives to the supply side through fiscal incentives under the Corporate Recovery and Tax Incentives for Enterprises Law, and on the demand side through a consumer subsidy program.

The government will provide consumers direct financial rebates or discounts ranging from P10,000 to P500,000 when they purchase EVs.

Currently, EVIDA allows owners of battery electric vehicles, or those powered solely by an electric battery, to enjoy a 30% discount on the motor vehicle user's charge imposed by the Land Transportation Office, while owners of HEVs enjoy a 15% discount. — **Justine Irish D. Tabile**

NDC targeting five more co-investment partners

THE National Development Co. (NDC), the investment arm of the Department of Trade and Industry (DTI), said it is looking to sign up five more co-investment partners next year.

"If we get the word out, I think before the middle of next year, we can get five more co-investment partners (to bring the total to) ten," Alewijn Aidan K. Ong, NDC assistant general manager for business development, said.

NDC's current slate of accredited co-investment partners are IdeaSpace, Investment & Capital Corp. of the Philippines, Gobi-Core Philippine Fund, Foxmont Capital Partners, and Real Tech Holdings Co., Ltd.

"We currently have five accredited partners... (but) the more the co-investment partners, the easier for us to reach out to more companies (to invest in)," Mr. Ong said. — **Justine Irish D. Tabile**

FULL STORY

Read the full story by scanning the QR code <tinyurl.com/mt9atx3x>

OPINION

Transfer pricing and business restructuring

LET'S TALK TAX
MARIE FE F. DANGIWAN

Bloomberg reports that business restructuring, specifically global mergers and acquisitions (M&A) activity, hit $5.9 trillion in 2021, crushing the previous record of $4.2 trillion set in 2015. Grant Thornton (GT) LLP has since estimated that global M&A activity slowed in 2022 to $3.7 trillion. Most analysts are predicting that we could see a return to pre-2021 levels of activity.

However, a new GT survey of M&A professionals found that, after a lengthy respite, M&A activity is expected to rebound in the second half of this year. In fact, the survey showed that 99% of respondents expect deal volume to increase over the coming months, with 11% forecasting a significant increase.

WHAT IS BUSINESS RESTRUCTURING?

In the context of this article, business restructuring refers to the cross-border reorganization of commercial or financial relations between associated enterprises.

Business restructuring may often involve the centralization of intangibles, risks, or functions with the "profit potential" attached to them. As an example, consider the conversion of full-fledged distributors (that is, enterprises with a relatively higher level of functions and risks) into limited-risk distributors, marketers, sales agents, or commissionaires (that is, enterprises with a relatively lower level of functions and risks) for a foreign associated enterprise that may operate as a principal.

According to the Organization for Economic Cooperation and Development (OECD) Transfer Pricing Guidelines, relationships with third parties (e.g., suppliers, subcontractors, customers) may be one reason behind a restructuring. Some of the reasons reported by businesses pursuing restructuring include the wish to maximize synergies and economies of scale, to streamline the management of business lines and to improve the efficiency of the supply chain, taking advantage of the development of web-based technologies that have facilitated the emergence of global organizations.

Furthermore, business restructuring may be needed to preserve profitability or limit losses, e.g., in the event of an overcapacity situation or in a downturn economy.

BUSINESS RESTRUCTURING AND TAXES

Multinational enterprises (MNEs) are free to organize their business operations as they see fit. Tax authorities cannot dictate how MNEs design their structure or where they should locate their operations. Business restructuring arrangements, though, may be motivated by the desire to obtain tax benefits. However, this does not in itself warrant a conclusion that it is a non-arm's length arrangement.

Tax authorities, on the other hand, have the right to determine the tax consequences of the structure put in place by an MNE. This means that the pricing for restructured transactions should be determined according to the arm's length principle. The arm's length principle requires that the prices charged for transactions between related parties be the same as those charged for similar transactions between unrelated parties. This is important because transfer pricing can have a significant impact on the tax liabilities of the related parties and the tax revenue of the countries in which they operate.

In view of business restructuring, the Bureau of Internal Revenue (BIR) in Revenue Audit Memorandum Order (RAMO) No. 1-2019 states that a reduction of profits in a business restructuring is acceptable when the functions performed, assets employed, and risks assumed are actually transferred to an associate. It is viewed as commercially rational for a multinational group to restructure in order to obtain tax savings.

However, if, despite the reduction of profit, it is found that the local entity continues to perform the same functions and bears the same risks, the BIR will make the necessary adjustments. This is because, in an arm's length situation, an independent party will not restructure its business if it results in a negative outcome, where it has a realistic option available not to do so.

TP considerations in business restructuring:

1. Identifying the transactions that make up the business restructuring with precision.

There can be group-level business reasons for an MNE group to restructure. However, it is worth emphasizing that the arm's length principle treats the members of an MNE group as separate entities rather than as inseparable parts of a single unified business. As a consequence, it is not sufficient from a transfer pricing perspective that a restructuring arrangement makes commercial sense for the group as a whole; it must be at arm's length at the level of each individual taxpayer. Accordingly, there should be an accurate delineation of the transactions comprising the business restructuring and the functions, assets, and risks before and after the restructuring.

2. Reallocation of profit potential as a result of a business restructuring.

When a change in business arrangements results in a reduction in profit potential or expected future profits, an independent enterprise does not necessarily receive compensation. The arm's length principle does not require compensation for a mere decrease in the expectation of an entity's future profits. When applying the arm's length principle to business restructurings, it is important to determine whether there is a transfer of something of value (an asset or an ongoing concern) or a termination or substantial renegotiation of existing arrangements that warrant compensation between independent parties in comparable circumstances.

3. Indemnification of the restructured entity for the termination or substantial renegotiation of existing arrangements.

The termination or renegotiation of contractual relationships in the context of a business restructuring might cause the restructured entity to suffer detriments such as restructuring costs (e.g., write-off of assets, termination of employment contracts), re-conversion costs (e.g., to adapt its existing operation to other customer needs), and/or a loss of profit potential. In these situations, it is important to evaluate whether, at arm's length, indemnification should be paid to the restructured entity, and if so, how to determine such indemnification.

MNES AND TRANSFER PRICING AUDITS

Benjamin Franklin once said, "By failing to prepare, you are preparing to fail." To ensure a high-quality transfer pricing risk assessment, MNE groups should structure themselves in a way that accurately reflects the economic substance of their transactions and operations to comply with transfer pricing rules. It is equally important to prepare transfer pricing documentation that provides useful information to the tax authority. Tax audit cases tend to be fact-intensive, so the availability of adequate information during the audit is critical.

Well-prepared documentation will give tax authorities some assurance that the taxpayer has analyzed the positions it reports on and has made a good-faith effort to comply with the transfer pricing rules. The documentation should include an overview of the MNE group business, including the nature of its global business operations, overall transfer pricing policies, and global allocation of income and economic activity.

Additionally, MNE groups are recommended to document their decisions and intentions regarding business restructurings, especially as regards their decisions to assume or transfer significant risks, before the relevant transactions occur. Taxpayers should be prepared to provide additional information and documentation to tax authorities upon request.

By carefully evaluating their compliance with transfer pricing rules and maintaining well-prepared documentation, taxpayers can help ensure that they are in compliance with applicable regulations and avoid potential penalties and other adverse consequences.

Let's Talk TP is an offshoot of Let's Talk Tax, 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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KYODO/VIA REUTERS

PEOPLE walk on Shibuya crossing in Tokyo, Japan on April 23, 2021, in this photo taken by Kyodo.

Why Tokyo's Shibuya does not want Halloween revelers

By Gearoid Reidy

OPINION

TOKYO'S Shibuya was once the center of raucous Halloween celebrations. But revelers are about as welcome this year as a box of healthy raisins in an elementary schooler's trick-or-treat candy haul.

For the past decade, Tokyo's youth had flocked to the district's streets to drink, party and gawk at costumed zombies, Marios, and Pikachus. But Shibuya no longer wants any part of it: This year, it's spending hundreds of thousands of dollars on an *information campaign* aimed at dissuading people from coming at all. "No events for Halloween on Shibuya streets," proclaim posters plastered across the railway station; Mayor Ken Hasebe has taken to speaking to the foreign press to get his *message* across.

It's quite the contrast from years past. In 2019, those same posters read "Let's make Halloween a part of Shibuya to be proud of," encouraging good manners while having fun. Lurking in the background, of course, is the *specter of Itaewon*, a similarly hip Seoul neighborhood where nearly 160 people were tragically *killed in a crush* during Halloween weekend in 2022. Tokyo has had its own brushes with Halloween disaster; two years ago, a man *dressed* as the Joker stabbed another on a train and attempted to kill others by starting a blaze. It's a miracle no one died.

Halloween is a recent invention in this part of the world. When I first came to Japan more than 20 years ago, few had even heard of it; pumpkins were for eating, not for decorating. A parade at Tokyo Disneyland, started in 1997, is often credited with popularizing the celebration, giving partiers a reason to dress up.

Around 2011, young people in costumes began to assemble in Shibuya in the hundreds, and then the thousands, as Halloween approached. While overseas it might be considered more of an event for kids, in Japan it became something for university students and other young people, who drank in the streets while stumbling from bar to bar. Why it took off when it did is a matter of debate. Some cite the rise of Facebook and Twitter, which grew in popularity in the aftermath of the earthquake, tsunami and nuclear disaster of 2011, and the release of the movie *The Social Network* that same year. Others cite the Harajuku icon Kyary Pamyu Pamyu's song *Fashion Monster*, released in 2012, whose music video features a Halloween party.

Regardless, Shibuya was at the center. And initially, authorities were on board: For several years in the mid-2010s, the city blocked off the main thoroughfare of Dogenzaka on multiple nights, freeing up the city center to cosplaying pedestrians. As a long-term resident of the area, there was something quite heartwarming about watching the event grow organically. Tokyoites don't tend to interact much with strangers compared with, say, locals in Osaka; to see the one night a year when a group of costumed Super Marios could encounter a completely unfamiliar group of Luigis — and instantly become friends — was faintly magical.

But as the number of attendees peaked pre-pandemic, Shibuya began to lose patience. Bad press circulated when a small truck was *overturned* in 2018; the media highlighted reports of sexual harassment and other assaults, though serious incidents were limited.

Hasebe, the mayor, says the *quality* of the event has declined, even as the number of people increased to some 40,000 in 2019, with fewer attendees dressing up in costume, and more coming to gawk at (or ogle) those who did. That year, in an attempt to limit rambunctiousness, the city began asking stores to stop selling alcohol; drinking in the streets is perfectly legal in Japan, though Shibuya has passed a rather powerless local ordinance that limits it around Halloween and New Year's Eve.

Although COVID-19 kept the event low-key over the last few years, things have now changed — and foreign tourists are back, with some 25% more in the capital than in 2019. Hasebe is worried that around 60,000 people could gather in the area this year.

To some extent, one sympathizes: It's not like the local economy is being boosted much by the costumes and canned drinks, and any tax surplus is probably canceled out by the cleanup on Nov. 1. Local residents complain about the noise and inability to access nearby businesses. Certainly, no one wants to risk another Itaewon.

But it's hard to think this isn't another heavy-handed decision more likely to backfire. Shibuya's reputation is built on being a haven for the young people who transformed it into a worldwide music and fashion sanctuary. That reputation is why so many congregate there, Halloween or not. Its bars and restaurants are what make the area famous — the reason tourists flock to Shibuya rather than, say, a business district such as Shiodome.

Hasebe says he wants to make Shibuya into a *global icon* like Paris or New York. Some would argue the area is already, in many ways, far ahead. But those cities didn't make their names by turning people away: Hasebe should perhaps observe how New York handles events such as the Times Square ball drop on New Year's Eve, when up to one million revelers attend.

Young people will come anyway. It would be better for authorities to lean into the event, and in doing so, manage it. Itaewon ultimately occurred not because of Halloween itself but because of insufficient planning, policing and crowd control. Those are easier to do when you know when people will congregate. Next year, let's give the capital's young people a spooky season — without the uncompromising shocks. — ***Bloomberg Opinion***