Bill seeks removal of 100% Filipino rule for investment company boards

A BILL seeking to remove a 100% Filipino requirement for board members of investment companies has been filed at the House of Representatives, opening the door for foreign shareholders to exercise control of such companies.

"The unintended consequence of the 100% Filipino board requirement in the Investment Company Act is to disincentivize the formation of foreign-owned funds in the country, such as venture capital funds, private equity funds, and hedge funds," Parañaque Rep. Gus S. Tambunting said in introducing House Bill No. 9522.

"This is also the reason why there are very few investment companies being set up in the Philippines even though there is no foreign equity limitation," he added.

The measure effectively amends Section 15 of Republic Act No. 2629 or the Investment Company Act.

The law requires investment companies to have 100% Filipino board membership even if the company is owned wholly or partly by foreign shareholders.

Under the proposed Foreign Board Representation in Investment Companies Act, "the election of foreigners as members of the board of directors of the investment company shall be allowed in proportion to their participation or share in the capital of the investment company," according to a copy of the bill.

"Majority stockholders should be able to participate in the exercise of corporate control through board representation," Mr. Tambunting said. — **Beatriz Marie D. Cruz**

PPA may freeze Manila cruises after disembarkation fiasco

THE Philippine Ports Authority (PPA) is considering suspending cruise ship operations at the Port of Manila if third-party providers fail to adequately explain the disorganized disembarkation process affecting thousands of passengers.

"We are expecting the reply of these cruise ship agents and terminal operators today and... if they do not reply, we might cancel the arrival of the cruise ships here in the Port of Manila," Eunice Samonte, PPA spokesperson, said in an appearance on One News on Monday.

The PPA gave the third-party providers to submit their explanation to PPA by Dec. 18, Monday, Ms. Samonte said.

"Our port facilities are equipped to receive big cruise ships," she added.

On Nov. 30, passengers of the Norwegian Jewel, operated by Norwegian Cruise Line, experienced a chaotic disembarkation process, an incident that turned viral on social media.

The PPA had initially blamed the contracted transport service and the ship agent Ben Line Agencies, Inc. for not providing sufficient personnel to assist the disembarking passengers.

Separately, the Department of Tourism (DoT) expressed grave concern over the mishandling of arriving cruise passengers.

It noted that the Philippines currently holds the distinction of being Asia's Best Cruise Destination 2023, "which was the result of hard work, convergence, and collaboration in the past year."

The DoT said that it will continue to ensure the growth of Philippine cruise tourism.

"The incident is taken by the DoT with utmost seriousness as the positive experience of tourists in the Philippines is paramount, and can only be assured with the full support of, and collaboration with, the DoTr (Department of Transportation) and PPA to prioritize the convenience and safety of arriving passengers," it added. — **Ashley Erika O. Jose**

Capital One official named AmCham president for 2024

THE American Chamber of Commerce of the Philippines (AmCham) said Capital One Philippines Support Services Corp. President Sara Murphy will serve as the chamber's president in 2024.

"Following a thorough election process, Sara Murphy unanimously secured the support of the AmCham Board of Directors and was appointed to lead the Chamber for the upcoming year," AmCham said in a statement.

"With substantial experience and a forward-thinking approach, she is poised to lead AmCham Philippines into a new growth, inclusivity, and innovation phase," it added.

Capital One Philippines, a unit of Capital One Financial Corp., provides call center and business process outsourcing for various clients.

According to AmCham, Ms. Murphy will be the chamber's first female president.

"This historic election reflects the chamber's commitment to diversity and equality, acknowledging the invaluable contributions of women in leadership roles," AmCham said.

"The chamber believes (Ms.) Murphy's unique perspective and leadership style will inspire positive change and open new opportunities for all members," it added.

Members of the business group also elected US Ambassador to the Philippines MaryKay Carlson as AmCham's honorary chairman.

IBM Philippines' Aileen Judan Jiao and RELX Reed Elsevier Shared Services Phils., Inc.'s Mark Lwin were named 1st and 2nd vice presidents, respectively.

AmCham's corporate secretary for next year will be Aileen Lerma, while Ebb Hinchliffe will continue as executive director.

Philip Soliven was appointed as the group's treasurer, while the members appointed 11 directors from various industries.

"AmCham extends its sincere appreciation to its outgoing President Frank Thiel of Quezon Power (Philippines) Ltd. Co. and the directors for their service and as it welcomes the newly elected team," the group said.

"The chamber looks forward to a year of collaboration, progress, and engagement under the new board's capable leadership," it added. — **Justine Irish D. Tabile**

Child injury rate in transport crashes triggers launch of road safety drive

THE Department of Transportation (DoTr) said it will work to improve the transport system with an eye towards child safety in collaboration with other agencies and policy-making bodies.

The statement comes in the wake of a World Health Organization (WHO) report identifying road crashes as top killer of children globally, with more than half of the fatalities pedestrians and motorcycle riders.

"The goal is for road safety measures to become an integral component of different policy agendas such as child health, climate action, gender and equality," Transportation Secretary Jaime J. Bautista said on Monday during the launch of a coalition to address child road traffic injuries.

On Monday, the DoTr together with the Departments of Education, Health, and Public Works and Highways, as well as the Council for the Welfare of Children and the Metro Manila Development Authority, signed a memorandum of understanding to establish the National Coalition for Child Road Traffic Injury Prevention.

Globally, road traffic deaths fell to 1.19 million per year in 2020, down 5% compared to 2010, WHO said.

"Yet the price paid for mobility remains far too high, and urgent action is needed if the goal of halving road traffic deaths and injuries by 2030 is to be achieved," WHO said.

In the Philippines, the WHO recorded 8,746 road fatalities in 2020. Of these, 1,670 were children, according to Sophia San Luis, executive director and co-founder of ImagineLaw — a public interest law group that advocates for evidence-based policy solutions.

"Political will is needed to address child deaths because of road crashes from proper education and awareness among stakeholders to better infrastructure and improved road systems that protect vulnerable road users," Ms. San Luis said. — **Ashley Erika O. Jose**

Supermarkets counting on late shopper surge as confidence weakens

By Justine Irish D. Tabile
Reporter

THE supermarket industry is expecting heavy foot traffic this week despite a decline in consumer confidence in the fourth quarter due to elevated prices.

"As of last week, there were only a few households buying. There are some, but it is still minimal. I expect after payday last weekend and 13th month pay, which should be out already in the next few days, households will rush to supermarkets," Philippine Amalgamated Supermarkets Association President Steven T. Cua said in an interview with One News.

Asked for his assessment of purchasing power after a decline of 19% in the Bangko Sentral ng Pilipinas confidence index in the fourth quarter, he said that it is still too early to tell.

"With one week to go, it is still very difficult to tell whether at the last minute people will rush out, have the money and buy the stocks on the shelves of supermarkets," Mr. Cua said.

"But of course, we are keeping our fingers crossed and hoping that people will go out and have the money to buy because people usually buy food last," he added.

He said the dearth of foot traffic may be due to packed holiday party schedules that are keeping the public away from the shops.

"So, for sure (it will increase), because if not then what do we expect from this year? Last week, there were a lot of company parties and even running into this week," he said.

"After that, people will start buying for their families, households, and for their *balikbayan* guests who are expecting a Filipino traditional Christmas celebration," he added.

Mr. Cua said stocks are sufficient for Christmas-feast items, and that the real problem is distributing the products evenly.

"Last week, corporate buyers were buying in bulk ... to give to their employees or to their customers and clients. That is why supermarkets have had to source from elsewhere last week. This week, we expect that it will be the households that will be buying," he said.

"I hope supermarkets are able to estimate more or less how much will be needed... it will be very tricky and difficult to estimate it properly," he added.

The Department of Trade and Industry has said that it received reports that items typically served in the Christmas feast — known in the Philippines as Noche Buena — are being sold above the price guide released by the department.

"We haven't been monitoring among members so I wouldn't know for sure (if they were sold at a higher price) ... this is most likely because they have had to source their goods outside their regular suppliers," Mr. Cua said.

He said goods are currently in the hands of the distributors and no longer with manufacturers.

"If (distributors') clients ordered again, sometimes they don't have any more stocks; these clients — the supermarkets and retailers — would have to source outside these regular distributors," he said.

"Everybody is doing the tightrope walk. Supermarkets are conservative in ordering ... there will be some supermarkets which will probably run out of certain items," he added.

OPINION

Deductibility of expenses made easy

LET'S TALK TAX
JEROME Q. TAPAOAN

"I hope that in this year to come, you make mistakes. Because if you are making mistakes, then you are making new things, trying new things, learning, living, pushing yourself, changing yourself, changing your world. You're doing things you've never done before, and more importantly, you're doing something."
— *The Sandman*, Neil Gaiman

While I find the thought behind this passage from my favorite book to be inspiring, I would not recommend taking such an approach when dealing with the Bureau of Internal Revenue (BIR). Mistakes in computing your tax due and filing your returns are the last thing you want to happen, as they are sure to result in a BIR finding of deficiency taxes, resulting in penalties.

Here we will specifically discuss the treatment of business-related expenses, determining whether they are deductible for income tax purposes, and preventing mistakes that result in deficiency taxes and penalties. Listed below are the common expenditures incurred by taxpayers and their proper treatment.

I. BAD DEBT EXPENSE/DOUBTFUL ACCOUNT EXPENSE

These are provisions that are recognized when the company suspects that it may not collect receivables from customers due to bankruptcy, financial problems, or such reasons. Keep in mind that these are also known as "provision for credit losses" and are non-deductible.

Only those that were written off and ascertained to be uncollectible or worthless may be considered deductible, provided that these are supported by the necessary documents in accordance with Revenue Regulations (RR) No. 25-2002, which lists the requisites for the valid deduction of bad debts from gross income:

1) There must be an existing indebtedness due that is valid and legally demandable;

2) These must be connected with the taxpayer's trade, business or practice of a profession;

3) These must not be sustained in a transaction entered into between related parties as enumerated under Section 36(B) of the Tax Code;

4) These must be charged off the books of account as of the end of the taxable year; and

5) These must be ascertained to be worthless and uncollectible when the debtor is insolvent at the end of the taxable year.

Additionally, for the taxpayer, in order to establish the essential requisites that the debt is actually worthless and cannot be collected, there must be evidence that it exerted diligent efforts to collect it, such as by (1) sending a statement of account; (2) sending collection letters; (3) giving the account to a lawyer for collection; and (4) filing a collection case in court; otherwise, these can be disallowed by the BIR and will be treated as non-deductible expenses for income tax purposes.

II. INTEREST EXPENSE;

Interest expenses may be reduced by 20% of the Interest Income subjected to final tax. Always remember that the base before multiplying the 20% rate should be gross of tax or before deducting the final withholding tax charged to interest income.

For the interest expenses related to deficiency/delinquency taxes, these are not subject to any limitation; you can use the whole amount as a non-deductible expense to arrive at income tax payable.

III. RENTAL EXPENSE;

The Depreciation/Amortization of right-of-use assets (ROUA) and related interest expense on lease liability (LL) under PFRS 16 should be non-deductible. Only the actual rental payments per lease agreement are part of your deductible expense for income tax purposes.

IV. ENTERTAINMENT, AMUSEMENT, AND REPRESENTATION (EAR);

EAR is subject to a ceiling of 0.5% and 0.1% of Net Revenue for sellers of goods and services, respectively. Any excess over the ceiling is treated as a non-deductible expense. For companies selling both goods and services, the allocation method is to be used to compute any amount exceeding the ceiling.

V. DONATION;

Donations to the government and accredited non-stock, non-profit organizations are deductible in full. If made to other donor recipients, these are subject to a 5% limit on taxable income before deducting the donation expense.

VI. RETIREMENT EXPENSE;

All provisions for retirement expense and interest expense/income on retirement plan assets per book are considered non-deductible.

The amount of the deductible will differ if the company has secured a BIR-approved plan in which current employees' costs are deductible in full and any excess over the current/normal costs, also known as past service costs, are amortized over 10 consecutive years. If the company has no BIR-approved plan, only the actual payment to the retired employee may be considered a deductible expense.

VII. TAXES & LICENSES;

For income tax purposes, deficiency/delinquency taxes and penalties paid to the BIR are not deductible. Only the interest expense related thereto can be considered deductible as mentioned in section II of this article. Examples of these deductible taxes are FBT, DST, OPT, and LBT, while non-deductibles include payment of Income Tax, VAT, Donor's Tax, and Stock Transaction Tax.

VIII. UNREALIZED/REALIZED FOREX LOSSES.

Only the actually closed and completed transactions during the year are considered deductible. Unrealized losses recognized last year may not automatically be treated as realized this year.

This guide helps to ascertain whether the expense is deductible or not, just like the cookbook you'll be using during the holidays for your family. The same broad cookbook rules are true for the above list of the proper treatment of expenses. As it is with cooking, some variation may apply to determine the proper amount of deductible expense.

May the upcoming 2024 busy season be fruitful in knowledge, wisdom, and experiences. Let's embrace new lessons and apply them to make our lives better. Remember, learning how to treat expenses properly will yield better business performance.

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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