



First energy-efficiency law incentives granted by BoI

THE Board of Investments (BoI) approved the registration of a solar project undertaken by Nakashin Davao International, Inc., making it the first business to be granted incentives offered under the Energy Efficiency and Conservation (EE&C) Act.

In a statement on Wednesday, the BoI said that Nakashin’s 519.2-kilowatt-per-hour solar photovoltaic rooftop system project is eligible for an income tax holiday (ITH) equivalent to 50% of its capital investment.

Estimated to cost P26 million, the project will be installed in the company’s food manufacturing facility. Nakashin produces

agricultural and aquatic products for export to Japan and the European Union.

“The Department of Energy (DoE) has certified that Nakashin’s project meets the required standards for endorsement by the BoI, further supporting its alignment with the country’s sustainability goals,” the BoI said.

Signed in 2019, the EE&C Act aims to encourage the use of energy-efficient technologies to help achieve the Philippines’ renewable energy (RE) goals.

The government has set a target for RE to account for 35% of the power generation mix by 2030, rising to 50% by 2040.

“By adopting RE technologies like solar, companies in the Philippines can significantly reduce their electricity costs and reinvest savings into business expansion, boosting overall economic growth,” the BoI said.

“Nakashin’s solar rooftop system will not only reduce its dependence on grid-supplied electricity but will also provide reliable and sustainable power for its operations,” it added.

BoI Memorandum Circular 2023-006 provides that self-financed EE&C projects are entitled to the ITH incentive and duty exemption on imports of capital equipment, raw materials, spare parts, or accessories. — **Justine Irish D. Tabile**

Japan firms awaiting final form of CREATE MORE bill

FIVE Japanese firms are waiting on the passage of a bill that will amend the Corporate Recovery and Tax Incentives for Enterprises (CREATE) Act before making expansion decisions, the Department of Trade and Industry (DTI) said.

Speaking via Viber, Acting Trade Secretary Cristina A. Roque said five Japanese companies she met on a business mission to Tokyo last week were eager to know the final details of the CREATE to Maximize Opportunities for Reinvigorating the Economy (CREATE MORE) bill.

“They expressed that the Philippines is very important for them now, and that their business with the Philippines is growing. They look forward to more investments in our country,” Ms. Roque said.

She identified the five companies as the Japan Institute of Design and Promotion, Itochu Corp., MinebeaMitsumi, Inc., AEON Retail Co., Ltd., and Marubeni Corp.

“The CREATE MORE bill’s passage is a significant step towards improving the ease of doing business in the Philippines. We are confident that it will boost investor confidence and attract more foreign direct investment,” Ms. Roque said.

The Senate last week adopted and ratified a bicameral conference committee report on the CREATE MORE bill, which seeks to lower taxes on domestic and foreign companies to 20% from 25%.

Apart from lowered taxes, the bill also seeks to return to investment promotion agencies the power to approve or deny tax incentives up to a certain threshold and to provide a 100% deduction on power expenses incurred in a taxable year to address high power costs.

The bill will also impose a cap of 2% on registered business enterprise (RBE) local taxes based on gross income. RBEs will also be allowed to have a work-from-home setup for up to half of their workforce without losing their incentives.

In a separate statement, the DTI said that Itochu was encouraged to explore the development of new Philippine products for export, such as processed foods, fresh fruit, and Halal-certified products.

Itochu expressed plans to increase production and procurement of Philippine food products like dried mango, banana puree, and other processed fruits. — **Justine Irish D. Tabile**

Port projects for landing farm goods under study

THE Department of Agriculture (DA) said it is looking to tap private-sector partners to develop port facilities specialized in handling agricultural shipments.

Agriculture Secretary Francisco P. Tiu Laurel, Jr. said the DA’s aim is to bring about the more efficient movement of farm goods, which may require such shipments to bypass the Philippines’ congested major ports.

“We will come up with a proposal... on available sites,” Mr. Laurel told reporters, adding that he hopes to attract bidders or unsolicited proposals.

He added that the DA is planning to identify 17 candidate sites, estimating the potential cost at about P40.5 billion.

He said 10 main sites are estimated to cost P3 billion each, with the remaining seven expected to cost about P1.5 billion each.

“For the areas where no one is interested, then we will need to

raise funding for that,” Mr. Laurel added.

He said that if the private sectors interested in assuming the risk of building port facilities for the government, “then let’s use other people’s money.”

The candidate sites include locations in Mindoro, Negros, Iloilo, southern Albay, and Batangas, he said.

The rerouting of goods to such ports, he said, have the potential to bring down fertilizer costs by 5%, corn by 5%, and feed for hogs by 10-15%.

Mr. Laurel has said that delays at the ports could foil government plans to bring down inflation via lower rice import tariffs.

“If we have the right number of agri-ports all over the country, the cost will go down, the price of rice, fertilizer, seed will go down. We really need the ports,” he said in a briefing earlier this week. — **Adrian H. Halili**



Visitor target maintained at 7.7M after falling behind pace in year to date

THE Department of Tourism (DoT) said it is sticking to its 7.7 million visitor-arrival target for 2024, noting that it seeking to offset the still-weak China market by tapping other Asian source countries as well as Eastern Europe.

At a briefing ahead of the Travel Sale Expo 2024 on Wednesday, DoT National Capital Region Supervising Tourism Operations Officer Ivannovich Dmitri Tan Agote said that the department is working to develop alternative source markets.

“Last year, we were able to surpass our target, so we are confident that we will be able to surpass it (again this year),” Mr. Agote said.

“Although we are not seeing a good forecast for the Chinese market because of geopolitical issues, we are working on developing other source markets like Indonesia, Malaysia, Vietnam, Eastern Europe, and India,” he added.

He added that the DoT is also working on attracting visitors from Singapore and the Middle East.

As of Sept. 10, the Philippines admitted 4.15 million international visitors, equivalent to 53.8% of the DoT’s target for the year.

Travel Sale Expo 2024 Chairperson Michelle G. Taylan said she expects the trade show to do strong business based on seasonal consumption patterns.

“Most of the visitors will be looking for gifts for their loved ones. We are expecting around 40,000 to 50,000 in foot traffic,” Ms. Taylan said.

Kicking off on Sept. 27, the three-day travel expo will be attended by 180 exhibitors occupying 200 booths at SM Megamall’s Megatrade Hall.

“There is still demand, and it’s really unstoppable,” she added.

Mr. Agote said that the department views visa requirements as a possible brake on international tourist arrivals.

“The DoT is actually working hand-in-hand with the Department of Foreign Affairs (DFA) to explore visa-free offerings, taking inspiration from other countries

that are relaxing their visa requirements,” he said.

With regard to route development, he said the DoT is working with the airlines to decongest the Manila gateway hub.

Separately, he said the DoT supports the proposed value-added tax refund scheme for tourists, which will put the country on par with neighbors already offering such refunds.

“For us in tourism, this is very welcome, because other countries are very successful with it, and replicating it here in the Philippines will certainly yield positive results, specifically in terms of enticing more tourists to come,” he added. — **Justine Irish D. Tabile**

OPINION

Simplified tax rules: What’s not to like?

Three quarters have passed since the Ease of Paying Taxes (EoPT) law took effect. What convenience in the tax processes did it bring to taxpayers? Has there been any improvement in the number of registered businesses? Any increase in tax collections? We know that the aim of EoPT is to simplify tax rules to encourage taxpayers to properly pay their taxes. The hope is to minimize the tax leakage from the informal sector and improve tax collection to adequately fund government services.

For this article, I would like to focus on three items in the EoPT law.

- **Timing of withholding tax remains the same, except for prepayment.**

Prior to EoPT, the triggers for withholding tax were provided under Revenue Regulations (RR) No. 2-98, or the Withholding Tax Regulations, pursuant to Section 244 of the Tax Code. Now, it is codified in the EoPT that the obligation to withhold tax arises at the time the income becomes payable. The term “payable” was previously defined as the date when the obligation becomes due, demandable or legally enforceable. This definition was retained in the amended withholding tax regulations but that’s not all that was retained. The new version of Section 2.574 of RR No. 2-98 also retained “when the income payment is accrued or recorded as an expense or asset, whichever is applicable, in the payor’s books.”

Practically speaking, the amount of accruals at the end of the year could be

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mere estimates, e.g., based on historical payments, because in most cases, the invoices containing the actual expense amount are yet to be received. Forcing companies to comply with this requirement may result in over- or under-withholding of taxes. The consequence is not without additional cost. In case of under-withholding, taxpayers are assessed an interest penalty in case of a tax audit. Meanwhile, in case of over-withholding, there is an additional cost (e.g., professional fees, time value of money) when trying to cover through a refund. And of course, there’s also some uncertainty if the refund will even be granted.

This does not appear to be an easy way of complying with the tax rules. It would have been better if the withholding tax was pegged on the invoice date. It is fixed, simple and ties both buyer and seller to the same time period. Invoicing signifies the reporting of revenue by the seller and, ideally, of an expense claim by the buyer.

Hopefully, this matter will be taken into consideration when implementing Section 57(C) of the Tax Code which provides for a three-year review by the Department of Finance (DoF) of the processes and rules of withholding. The DoF may direct the Bureau of Internal Revenue (BIR) to amend the existing

regulations if they are found to adversely and materially impact the taxpayer.

- **Time of claiming creditable withholding tax (CWT) credits was not clarified in the regulations.**

Similar to withholding tax, the EoPT codified the timing of CWT claims, whereas previously, it was just covered in the Withholding Tax Regulations. Based on how the provision was crafted in the EoPT law, a few points of jurisprudence were taken into consideration, such that CWTs deducted and withheld in the previous period are still creditable in the subsequent year. However, the last statement in the EoPT confuses taxpayers because it seems to qualify the reporting of CWT claims to the period when the corresponding income is reported. This qualifier is contrary to the statement that it is creditable in the succeeding period. Unfortunately, no other guidance has yet been issued to cover how this should be implemented.

Nonetheless, in at least one decision (G.R. No. 231581 dated 10 April 2019), the Supreme Court (SC) made it clear that prior year CWTs can be claimed as tax credits in the year of actual withholding by the withholding agent even if the actual reporting of income by the seller was done in prior years. According to the SC, what is important is that the income was reported in the proper period by the seller and the prior year CWTs have not been claimed as income tax credits in prior years.

In the absence of detailed guidance from the BIR, I hope that the tax au-

thorities are guided by the above SC case considering that it appears to align with the intention of the legislature and satisfies the goal of the EoPT to simplify our tax rules.

- **Refund of excess CWTs in case of closure cannot be elevated to the Court of Tax Appeals (CTA) without a decision from the BIR.**

Filing a claim for a refund of excess CWTs by a corporation permanently ceasing operations was not provided for in the Tax Code prior to the EoPT nor in the regulations. Previously, guidance for such situations could only be found in court decisions.

With the EoPT, the Tax Code now clearly states that when the taxpayer can no longer carry over excess CWTs due to dissolution, the taxpayer can file an application for refund of any unutilized CWT with the BIR given two years to decide. RR No. 5-2024 covers refunds and one section is devoted to refunds as a consequence of the dissolution of the business.

As provided for under the RR, the two-year processing period for such refunds is an exception to the 180-day rule for other types of income tax refunds (i.e., due to erroneous payment). However, unlike other types of refund where it is clear that the taxpayer may seek judicial remedies in case of inaction by the BIR within the 180-day processing period, in refund cases for closure, there is no clear remedy under the regulations in case of inaction within the two-year processing period.

Personally, I believe that the taxpayer should be able to elevate the refund cases for closure to the CTA in cases of inaction of the BIR as provided for under the Revised Rules of the CTA.

The EoPT features several amendments which I believe have had an impact insofar as convenience in registering and paying taxes is concerned — as in the case of the file-and-pay-anywhere mechanism, and in the process of transferring the place of business. Though the EoPT amendments and intention are commendable, some of the implementation guidelines may need to be revisited. Enactment of a tax rule is one thing, but enforcement of such rule is another thing. I hope that enactment and enforcement can be better harmonized, and as is the intention, the guiding principle under the EoPT should always prevail, that is, to simplify tax compliance.

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