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TAX LAW FOR BUSINESS

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Reexamining the tax treatment of transport network companies

Attracting widespread attention and, perhaps, public condemnation in recent days is the impending crackdown by the Land Transportation Franchising and Regulatory Board (LTFRB) on Uber and Grab drivers without franchises. In a Palace briefing on Tuesday, Transportation Secretary Arthur P. Tugade asserted that "the government should also have a share from their [Uber and Grab] earnings". He added that there should be mechanics on revenue-share collection.

On this point, it is important to recall that as far back as October 29, 2015, the Bureau of Internal Revenue issued Revenue Memorandum Circular (RMC) 70-2015, which lays down the tax treatment of persons engaged in the business of land transportation, particularly transport network companies (TNCs), such as the likes of Uber and Grab.

The current tax rules cover two scenarios: (1) the passenger pays the TNC and the TNC pays its partners (the persons or entities who own the vehicles); and (2) the passenger pays the partner and the partner pays the TNC.

If the payment is made by the TNC that, in turn, pays the partners, the tax treatment is as follows:

If the TNC is not a valid and current holder of Certificate of Public Convenience (CPC)

The TNC shall issue a value-added tax (VAT) official receipt (OR) to its passenger and as a land transportation service contractor, shall be subject to 12-percent VAT.

If the TNC is a holder of a valid and current CPC

The TNC shall issue a non-VAT OR to the passenger and, shall be subject to the 3-percent common carriers tax (percentage tax).

On the other hand, if the payment is made to the partner who, in turn, pays the TNC, the tax treatment is as follows:

If the partner is not a holder of a valid and current CPC

The partner is a land transportation service contractor, and should issue either a VAT OR, when it is a VAT-registered taxpayer or a non-VAT OR if it has not exceeded the threshold of P1,919,500.00 and has not opted for VAT registration.

If the partner is a holder of a valid and current CPC

The partner shall issue a non-VAT OR to the passenger/customers and shall be liable for the 3-percent common carriers tax.

Based on the above, it is clear that a mechanism is in place to ensure that TNCs and their partners are paying the proper taxes to the government. What needs to be done, however, is to further clarify the rules.

RMC 70-2015 provides clear rules when it comes to VAT and the common carriers tax, but further guidance is needed from the government on the issue of income tax.

The RMC modestly provides that the TNCs and their partners must withhold the required creditable/expanded withholding tax, final tax, tax on compensation of employees and other withholding taxes and that payments made by TNCs to partners and payments made by partners to TNCs are subject to expanded withholding tax. As a catchall, the RMC states that the TNCs and their partners should file the applicable tax returns and pay the correct internal-revenue taxes.

Some issues that should be addressed for the benefit of the TNCs and their partners are as follows:

1. The tax treatment considering that a percentage of the passenger's fare pertains to the TNC, while a certain percentage goes to the partners;
2. The applicable withholding tax treatment on payments made by the TNC to the partner;
3. The applicable withholding tax treatment of payments made by the driver to the TNC;
4. The withholding tax treatment if the partner owns the vehicle and engages another person to drive the car on his behalf; and
5. The proper treatment of special discounts and promo fares given by TNCs to passengers.

Let there be no mistake. The TNCs and their partners, like everyone else, should pay their fair share in taxes. However, the government should do its part to make compliance with the law easy and straightforward. From being enforcement oriented, the government should shift its orientation to one that is service oriented. That can be done by providing clear and comprehensive rules that, in this case, can be followed by partners of TNCs who are mostly individuals.

It cannot be denied that TNCs and their partners have provided a solution to our transportation woes. Perhaps, it is high time to reexamine our legal and tax rules on transportation and to make it work for those who are trying to comply and take part in the shared goal of improving the quality, sustainability and reliability of public transport, instead of making the rules work against those who refuse to comply and take part.

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