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TAX LAW FOR BUSINESS

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Tax cut on electricity generation and distribution

WHETHER you drive your own car or you commute via public transportation, all of us have a reason to relish on the collapse in oil prices in the global market. Will the price in electricity follow? Hopefully so.

Well, we have today twin reasons to be hopeful. For one, the BIR recently issued Revenue Memorandum Circular (RMC) 6-2015 which circularizes Executive Order (EO) 173 dated October 31, 2014. Under Section 1 of EO 273, as circularized in RMC 6-2015, all liabilities for real property tax on property, machinery and equipment (including special levies accruing to the Special Education Fund) actually and directly used by Independent Power Producers (IPPs) for

the production of electricity under Build-Operate-Transfer contracts (whether denominated Power Purchase Agreements, Energy Conversion Agreements or other contractual agreements) with government owned and/or controlled corporations, for all years up to 2014 are reduced to an amount equivalent to the tax due computed based on an assessment level of 15 percent of the fair market value of said property, machinery and equipment depreciated at the rate of 2 percent per annum, less amounts already paid by the IPPs.

Further, all fines, penalties and interest on such deficiency real property tax liabilities are condoned and the concerned IPPs are relieved from payment. President Aquino issued EO 173 in accordance with Section 277 of the Local Government Code (LGC) of 1991 which authorizes the President of the Philippines to condone or reduce the real property tax and interest for any year in any province or city or a municipality within the Metropolitan Manila Area, when public interest so requires.

On a more recent development, the Court of Tax Appeals (CTA) recently issued a decision that will probably trigger the reduction of local business tax imposed by local government units upon power generating companies. In CTA EB Case 1086, the tax court has ruled that the nature of business of a power generating company falls within the category of “manufacturer/producer” and not “contractor” of electricity. The ruling in this case found its rationale on the fact that respondent taxpayer buys bunker fuel as its chief raw material and converts it through mechanical and chemical processes to electricity. In this case, Respondent takes bunker fuel as a raw material then feeds it into the plant’s diesel engine, which ignites and burns the fuel, producing heat energy. The fuel undergoes a process called combustion while heat is used to activate the plant’s turbine, converting heat energy into mechanical energy. Hence, this nature of respondent’s business fits in the definition of a “manufacturer” under Section 131(o) of the LGC of 1991 and Section 3A.01(11) of the Makati Revenue Code. Respondent taxpayer cannot be considered a “Contractor” under Section 131(h) of the LGC of 1991 even as it not only supplies electricity but also manages, operates and maintains and also repairs the power plant/s of its customers for a substantial fee or consideration.

The LBT imposed by municipal government units under Section 143 of the Local Government Code of 1991 is classified into eight (8) clusters which are grouped according to the business activity of the taxpayer involved. Manufacturers, assemblers, repackers, processors, brewers, distillers, rectifiers, and compounders of liquors, distilled spirits, and wines or manufacturers of any article of commerce of whatever kind or nature are taxed at a maximum rate of 37 and a half percent of 1 percent of the taxpayer's gross receipts for the preceding calendar year while the maximum rate imposed upon contractors is at a maximum rate of 50 percent of 1 percent of the taxpayer's gross receipts for the preceding calendar year. Under Section 151 of the Local Government Code of 1991, the rates of taxes that the city may levy may exceed the maximum rates allowed for the province or municipality by not more than 50 percent.

These twin developments affecting the energy sector will certainly bring down cost of electricity generation, transmission and distribution, and hence, giving each one of us good reasons to expect the reduction in the price passed on to the end users.

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