

Smuggled food seizures since April 2021 valued at P650 million

SEIZURES of smuggled food since April last year have been valued at P650 million, the Department of Agriculture (DA) said.

The seizures cover shipments seized up this month by the Bureau of Customs and the Department of Trade and Industry as well as the DA, due to underdeclaration, overvaluation, or unsafe products, among others.

In 2021, confiscated goods included P121.3 million worth of undervalued imported rice shipped to Cebu, Cagayan de Oro, and Iloilo; P101.5 million worth of red onions in Subic, P100 million worth of African Swine Fever (ASF)-infected

meat and assorted agri-fishery products in Navotas; P72 million worth of assorted vegetables in Cagayan de Oro; P85 million worth of assorted vegetables in Subic; P50 million worth of red onions in Cagayan de Oro; P10 million worth of agri-fishery products in Bulacan, P4.7 million worth of assorted vegetables in Malabon; and over 1,800 sacks of sugar in Navotas.

Agriculture Secretary William D. Dar said in a statement that the seizures “protect the agri-fishery sector from transboundary diseases and... unsafe and unhygienic food items.”

In the 2022 year to date, confiscated shipments included P46

million worth of smuggled agri-fishery, frozen meat, and products from China; P42 million worth of wrongly-declared fishery products from Vietnam; P11 million worth of wrongly-declared frozen meat in Antipolo and Quezon City; and P10 million worth of fresh vegetables at the Manila International Container Terminal.

Separately, the DA said the onion industry is suffering from competition from smuggled goods, and needs to be made more competitive while also protecting farmers by clamping down on smuggling initiatives. The industry could also use a boost from

investing in cold storage facilities to preserve the harvest.

“We want the onion industry to be competitive enough to export. The increase in onion production is an indication that the sector can be self-sufficient when properly supported,” Mr. Dar said in a separate statement.

The DA is working with the Bureau of Plant Industry (BPI) on anti-smuggling efforts. The BPI will exercise its police powers, in coordination with the DA's economic intelligence team, and monitor inventories at accredited cold storage warehouses. — **Luisa Maria Jacinta C. Jocsos**

LGU credit rating system seen paving way for green bond issues

A SYSTEM for rating local governments' creditworthiness will someday facilitate their issue of bonds, including green bonds, enhancing their financial self-sufficiency, a Department of Finance (DoF) official said.

“In the future, how do we help capacitate them so they can float, for example, their own green bonds to fund their own sustainable projects?” Finance Assistant Secretary Paola A. Alvarez said at a webinar organized by the European Chamber of Commerce of the Philippines on Wednesday.

Funds generated by green bonds are used for climate mitigation and environmental projects.

The Bureau of Local Government Finance, Ms. Alvarez said, is looking into developing an LGU (local government unit) credit rating system that is acceptable to both investors and the LGUs themselves.

“The Secretary of Finance stressed the importance of the participation of multilateral development banks,” she said. These banks, she added, are considered trusted intermediaries by both investors and local governments.

The DoF has been asking multilateral banks to come

up with guidelines for vetting climate adaptation projects in developing countries in order to create a “seal of good housekeeping” that would attract private investors.

Meanwhile, members of the new national panel of technical experts under the Climate Change Commission were given their assignments last year to represent various Philippine provinces.

The provincial assignments are intended to address the problem of lack of capacity at many local governments in preparing viable climate adaptation projects to be supported by a climate change fund, known as the People's Survival Fund.

“The goal here is to help local government units understand how to properly plan their local adaptation plan, taking into consideration the different risk exposures that are specific to an island province,” Ms. Alvarez said.

The Philippines' maiden green bond offering of at least \$500 million is set to be issued “in the coming weeks.”

The offering will raise funds for the Philippines' clean energy projects and other climate-change mitigation initiatives. — **Jenina P. Ibañez**

DTI to recommend removal of plastic barriers in places of business

THE Department of Trade and Industry (DTI) said it will propose the removal of plastic barriers in places of business in response to the reduction in the case count for coronavirus disease 2019 (COVID-19).

Trade Secretary Ramon M. Lopez said in a radio interview on Wednesday that the DTI plans to ask the Inter-Agency Task Force for the Management of Emerging Infectious Diseases (IATF-EID) to allow establishments operate without acrylic barriers.

The DTI view is in line with the recommendation of Metro Manila mayors to shift the capital region to the more relaxed Alert Level 1 by March 1. Currently, the National Capital Region is observing Alert Level 2.

Acrylic barriers have been installed on restaurant tables and other businesses requiring indoor interaction as a measure to maintain social distancing and reduce the spread of COVID-19.

“Ang isa naming kinokonsider na pagtanggal whether mag-move tayo sa Alert Level 1 o hindi ay ‘yung mga acrylic barriers. Puwede nang tanggalin ‘yan. Ipo-propose natin sa IATF. Puwede na nating hindi i-require ‘yan kasi ang importante ay naka-mask ‘yung tao (The things we are considering (include) to remove the plastic barrier requirement and whether we should move to Alert Level 1. It may be time to remove them, which we will propose to the IATF. The important thing is that people wear masks),” Mr. Lopez said.

Under Alert Level 1, businesses will be permitted to operate at 100% capacity as long as minimum public health standards are followed. Intrazonal and interzonal travel will also be allowed regardless of age and comorbidities.

Alert Level 2 allows businesses to operate at 50% indoor capacity and 70% outdoor capacity.

Mr. Lopez said a circular will be issued detailing measures to ensure better ventilation at business establishments, which may include the use of air purifiers, HEPA air conditioning filters, plus a recommendation to open windows.

Mr. Lopez said temperature checks should remain despite the loom-

ing change in protocols for business establishments, in order to prevent the further spread of COVID-19.

Meanwhile, Mr. Lopez said requiring booster cards before allowing entry could become a requirement once more people get their booster shots.

“Ang definition natin kasi ng fully vaccinated ay ‘yung two doses. So, ‘pag dumating na ‘yung time na marami nang na-booster shot maybe that can be a new requirement in the future, hindi ngayon (Our definition of fully vaccinated is two doses. So, when the time comes when many receive booster shots, maybe that can be a new requirement in the future, not now).” — **Revin Mikhael D. Ochave**

BFAR medium-term plan targets major output increases for shellfish, crabs

THE Bureau of Fisheries and Aquatic Resources' (BFAR) next five-year plan has set aggressive targets for shellfish and crab output, with more modest goals for other segments of the fishing industry, the Agriculture department said.

Shellfish were set a target for output gains of 250% by the end of the five-year period, while mangrove crab production had a goal of 500% growth. Both commodities had exceeded their targets between 2016 and 2020.

Commercial fishing production was set a growth target of 4%, while that of municipal fisheries had a goal of 5% growth. The growth target for production of *bangus* or milkfish was 6%.

The post-harvest segment of the fisheries industry was set a goal of reducing losses by a 10%, and an 80% compliance rate on hygiene and sanitation standards for all fish processing establishments.

The emphasis of the plan is “large-scale production, commercialization and consolidation,” Agriculture Secretary William D. Dar said in a statement.

“This endeavor shall serve as an impetus in improving the productivity of the fisheries sector, while empowering stakeholders, especially fisherfolk, towards food security, inclusive growth, and global competitiveness,” he added.

The trade and marketing segment of the industry was tasked with upgrading market linkages, developing capacity, and improving access to credit.

The four major fisheries segments are aquaculture, marketing, post-harvest and the capture fishery.

“The bureau has consolidated (industry inputs) to serve as a guide to both policy makers and program implementers towards the sustainable management and development of the country's fisheries and aquatic resources for the next five years,” the BFAR added. — **Luisa Maria Jacinta C. Jocsos**

BIR shuts down 18 POGO companies in Cagayan

THE Bureau of Internal Revenue (BIR) said it shut down 18 Philippine Offshore Gaming Operation (POGO) licenses and support service providers in Cagayan Province after they failed to register with the bureau.

The BIR, in a statement dated Feb. 15, said the licenses and their support service providers were temporarily closed after they were found to have been unregistered by its POGO task force.

The POGOs were all licensed by the Cagayan Economic Export Zone Authority to engage in interactive gaming.

The licenses shut down were Asian BGE Ltd.; Fine Day Holdings Ltd.; Hana Talk, Inc.; NCGAC Ltd.; NEO Kingdom Ltd.; Oak Tree Services Ltd.; Succeed Asia Ltd.; Wealthy Leap; and WUS Technologies Holdings Ltd.

Meanwhile, the support service providers were identified as Alpha Fortune Management Solutions, Inc.; Empire Group International & Management Tech Services, Inc.; Hi-Source Services, Inc.; Kui Business Services, Inc.; Lyndhurst Services, Inc.; Pacific Solutions Management; Rimrock ICT Services, Inc.; Succeed Asia Ventures, Inc.; and Top Asia Leisure and Entertainment Corp.

According to Republic Act No. 11590 or the POGO Law, offshore gaming companies must register with the BIR because they do business in the Philippines. Non-registration exposes the companies and their service providers to the risk of closure.

Business operations will remain suspended until they meet the bureau's registration requirements, comply with tax rules, and pay tax deficiencies and penalties.

An Act Taxing Philippine Offshore Gaming Operations, or Republic Act No. 11590, which more clearly defined POGO tax obligations, took effect on Oct. 9, 2021.

Since the implementation date up to Dec. 31, the BIR collected P1.22 billion from licensees, service providers, and employees.

As of the end of January, 40 POGO licensees and 168 service providers are registered with the BIR.

The bureau has said that the most common violations of POGOs that lead to closure are non-registration with the BIR, non-registration of tax types to which POGOs are subject to pay, and non-payment or underpayment of taxes. — **Jenina P. Ibañez**

OPINION

Tax-free exchanges: Post audit and reporting requirements

FOR various reasons, corporate reorganizations are undertaken to align group structures with new business models, prepare for the entry of investors, or prime for divestitures, among others. Typically, these may involve exchanges of property for shares which may qualify as a tax-free exchange (TFE) transaction, subject to certain conditions.

In case of transfers of real property located in the Philippines and Philippine shares of stock, a Certificate Authorizing Registration (CAR) is required before the change in legal ownership can be recorded by the Register of Deeds and the Corporate Secretary, respectively. In case a tax exemption is invoked, the Bureau of Internal Revenue (BIR), in the past, required a confirmatory ruling issued by the BIR's Law and Legal Division (LLD) to support the CAR application. From experience, the application process is tedious and protracted, which unnecessarily holds up the CAR issuance, and consequently, the transfer of legal title. Although technically not mandatory, taxpayers must comply because, without the ruling from the LLD, a CAR will not be issued by the Revenue District Offices (RDOs).

With the enactment of the CREATE Law, the need for a prior confirmatory ruling to avail of a tax exemption was revoked. TFEs, after all, are free from certain taxes, regardless of the BIR's confirmation. To further add teeth to this policy directive, the BIR issued

Revenue Memorandum Circular (RMC) 19-2022, a much-awaited guideline, clarifying the rules on the issuance of a CAR without a prior BIR confirmatory ruling for TFEs.

ROLE OF THE RDOs: EVALUATION AND POST-AUDIT

Following the enactment of CREATE, the review and evaluation of TFE transactions were effectively transferred to the RDOs. While taxpayers are not precluded from obtaining confirmation from the LLD, the RMC limited the ruling option to applications involving questions of law.

The RMC provided a list of documentary requirements to support the CAR application, notably incorporating some of the documents previously required by the LLD, including BIR Form No. 1927 or the Application and Joint Certification for transfers to a controlled corporation under Section 40(C)(2) of the Tax Code. The details of the TFE must be reported in this form. However, to avoid confusion, an updated version must be issued to revise items that still refer to an application for a confirmatory ruling, which should not be the case.

Moreover, the CAR applications must be filed with the RDO having jurisdiction over the following places: where the property is located (in case of real property), where the issuing corporation is registered (in case of shares of stock), or where the transferee corporation is registered (in case of multiple properties).

Following existing revenue issuances on tax audit and assessment, the RDOs are also tasked under the RMC to conduct a post-audit of TFE transactions to determine their taxability. If the transaction is found to be not qualified as a TFE, the CAR previously issued is not invalidated; instead, the transaction will be subject to the applicable taxes, plus interest, penalty, and surcharge.

SUBSTITUTED BASIS: GOOD HOUSEKEEPING OR EXCESSIVE MONITORING?

A TFE transaction is exempt from applicable value-added tax and documentary stamp taxes. While a TFE is not subject to capital gains (CGT) or income tax, it merely defers the taxation of the gain/loss until captured in a subsequent taxable transaction. Thus, for monitoring purposes, the RMC reiterated and clarified that the existing revenue issuances on the establishment and monitoring of the substituted basis of the properties transferred and stocks received continue to apply. Reporting obligations under the RMC include:

- **Tax filing.** A complete statement of all facts pertinent to the non-recognition of gain or loss in connection with the reorganization must be filed as part of or incorporated in the income tax return in the taxable year within which the reorganization occurred.

- **Yearly audited financial statements (AFS) disclosure.** During the holding period, the parties need to disclose as a note to their respective AFS that they hold assets/shares acquired

in a TFE and the year in which such exchange occurred.

- **Annotations on the titles and stock certificates.** The parties shall cause to annotate, at the back of the Transfer Certificate of Title, Condominium Certificate of Title, and Certificates of Stock, the date the deed of exchange was executed, the original or historical acquisition cost of the properties or shares of stock transferred, and the fact that no gain or loss was recognized as a result of such exchange. Certified true copies of these documents should be submitted to the RDO which issued the CAR, within 90 days from the date of the receipt of the CAR by any of the parties to the exchange. Otherwise, the RDO shall refer the docket of the case to the LLD for appropriate action.

- **Mandatory accounting.** The shareholders of the absorbed/transferee corporation and the surviving/transferee corporation shall record in their respective books the mandatory accounting entries.

REASONABLE STREAMLINING OF THE CAR PROCESS

The RMC's no-confirmatory ruling guidelines echo the directive of CREATE. On the positive side, devolving the evaluation function from the LLD to the RDOs generates efficiency. However, the post-audit of an already approved TFE transaction, duly supported by a CAR, issued by the same (or another RDO), and the additional reporting requirements, seem superfluous. Since the CAR has been issued, the RDO presumably

reviewed the application already; hence, a re-evaluation of the same application is redundant. Noteworthy too, is that foreign parties to a TFE, being beyond the RDO's jurisdiction, are not covered by existing audit issuances and therefore could not be subject to post-audit. Other than the annotation of the stock certificates which is justified, foreign parties cannot be compelled to comply with the tax reporting and accounting requirements. These lopsided circumstances put Philippine-based parties to a TFE at a disadvantage.

Thus, while tax exemptions are strictly construed against taxpayers, prescribing unnecessary administrative requirements defeats the dispensation of the confirmatory ruling. The annotation of the relevant ownership documents should be sufficient for purposes of establishing and monitoring the substituted cost and capturing the deferred gain in the next transaction. Establishing layers of monitoring only encumbers tax-free reorganizations.

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