DoF warns against fuel excise suspension, backs targeted relief for vulnerable sectors

THE Department of Finance (DoF) once again warned against any moves to suspend the fuel excise tax, saying that it would have the perverse effect of providing relief to well-off consumers, who are the country's leading fuel users.

DoF Chief Economist Gil S. Beltran, in an economic bulletin on Monday, said that while high global energy prices eventually flow on to domestic prices, any suspension of the fuel excise ultimately provides relief to those who need it least, even if the intent is to dampen inflation.

"Higher energy prices in the world market ultimately get translated into higher local pump prices," Mr. Beltran said. "However, it would be a policy mistake to suspend fuel taxes since it will be the top 10% of the population that will gain the most as they account for nearly half the fuel consumption in the country."

In April, inflation came in at 4.9%, the highest reading in over three years.

According to the Department of Energy, the price of diesel has risen P30.30 per liter in the year to date, kerosene P23.90, and gasoline P17.80.

He said the preferred response is targeted fund transfers to vulnerable groups, and a suspension of the excise.

"The lingering effects of the African Swine Fever (ASF) continue to threaten food security... further complicated by (geopolitical uncertainties) that have implications on both food and energy security," Mr. Beltran said. "Moreover, avian flu outbreaks in parts of the country pose a threat to the poultry sector."

Mr. Beltran recommended the restoration of hog populations while importing meat as a temporary measure to boost supply, and moving decisively to contain the avian flu outbreak.

"Non-food price inflation will continue to be driven by developments in the global energy market," Mr. Beltran said.

Dubai crude, the benchmark oil price for Asia, averaged $102.68 a barrel in April, up 64.6% from a year earlier. It declined 9.2% month on month. — **Tobias Jared Tomas**

FDI growth momentum could dissipate due to RCEP delay

By Revin Mikhael D. Ochave
Reporter

GAINS made in building momentum for foreign investment are at risk if the Philippines further delays participation in the Regional Comprehensive Economic Partnership (RCEP) trade agreement, according to the Department of Trade and Industry (DTI).

Trade Secretary Ramon M. Lopez told *BusinessWorld* in a phone interview that not signing up to RCEP will result in missed opportunities for the Philippines.

"We will waste our momentum on huge FDI growth during President Rodrigo R. Duterte's administration. Our annual average foreign direct investment (FDI) from 2016-2021, even with the coronavirus disease 2019 (COVID-19) pandemic, is almost 3 times more (than in previous periods) at $9.1 billion. We are now ranked 4th in Southeast Asia as recipient of FDI, from 6th before 2016," Mr. Lopez said.

"Investors will shift to RCEP participating countries which have better market access to RCEP markets (if the Philippines stays out), and this will affect job generation. The labor sector will be affected," he added.

The Philippines is still not signed up for RCEP as after Senate failed to ratify the treaty before adjourning on Feb. 3 for the election break. President Rodrigo R. Duterte signed the trade deal on Sept. 2.

The Senate is set to resume session on May 23, sitting until June 3 before it is replaced by the newly-elected legislators.

According to Mr. Lopez, the DTI has briefed various senators and their staff who had questions regarding RCEP.

"I think there's just about a week for Senate session, starting May 23. We have given all the data and information and did the briefing," Mr. Lopez said.

RCEP, which started taking effect on Jan. 1, is a trade deal involving Australia, China, Japan, South Korea, New Zealand and the 10 members of the Association of Southeast Asian Nations.

It is touted as the world's biggest trade deal as its prospective members represent 30% of the world's gross domestic product.

More reforms needed to support investment liberalization — economist

FOLLOW-UP REFORMS are needed to build on the progress made in opening the economy up to foreign investment and ensure that the Philippines becomes a viable investment destination for the long haul, an Ateneo de Manila economist said.

"All these steps are intended to attract foreign investors into the country," Economics Professor Leonardo A. Lanzona said in a Viber message. "The crucial question is whether we have instituted enough reforms to make the country attractive."

He was referring to recent laws easing foreign ownership restrictions in industries like telecommunications, railways, and retail.

However, he cited workforce skills and technical proficiency as a possible deal-breaker for foreign investors, even when they are allowed to take full ownership of more types of companies, making any gains in investment unsustainable.

"Unless these questions are addressed, capital will increase, but eventually diminishing returns will emerge. Capital formation is necessary, but it will not be sufficient."

Mr. Lanzona said there is some uncertainty surrounding the government's 7-9% growth target this year, because many micro, small and medium enterprises (MSMEs) were rendered "no longer viable" by the pandemic.

Mr. Lanzona said the reforms should center on stepping up the pace of technological adoption and the corresponding upskilling of the workforce.

"We need to have policy of technological change so that investors are induced to create the appropriate technology suited for our resources," he said. "Technological innovation should not just be the responsibility of the government, the private sector needs to take part in it."

"Second, we need to have a policy of skill development and employment creation. This will ensure that benefits of the reforms will reach the poor."

"Third, institutions should be created to maximize technological change." — **Tobias Jared Tomas**

FULL STORY

Read the full story by scanning the QR code with your smartphone or by typing the link
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PCCI seeks immediate action on NCR traffic to remove drag on economy

IMMEDIATE ACTION is needed to address Metro Manila road congestion in order to reduce the drag of heavy traffic on the economy, according to the Philippine Chamber of Commerce and Industry (PCCI).

PCCI President George T. Barcelon said during a recent general membership meeting that P3.5 billion is lost daily due to the congested Metro Manila roads. Economic losses could swell to P5.4 billion a day by 2035 if the issue is not addressed, he added, citing projections by the Japan International Cooperation Agency.

"There are a lot of concerns besetting our transportation and logistics industry. These issues need a comprehensive set of measures to curb further problems and avoid more losses to the economy," Mr. Barcelon said.

"Transportation and logistics are essential to sustaining economic gains and building on the reform measures that are aimed at making the country attractive to investments and conducive to jobs-creating activities," he added.

Transportation expert Rene S. Santiago said there should be more public transportation for commuters and fewer vehicles overall.

Mr. Santiago added that 246 kilometers of mass transit lines and 78 kilometers of urban expressways need to be built, while pending projects should be completed like the Quezon Avenue bus rapid transit, LRT-1 Extension to Bacoor and LRT-2 East Extension, and the addition of trains to the MRT.

"Long-term (measures) would be to manage population size and distribution. The private sector can take the lead proactively through programs supporting balik-probinsya new growth centers and accelerating the shift to the Fourth Industrial Revolution work-style or hybrid work and hybrid school arrangements," Mr. Santiago said.

"These would reduce vehicles (by) at least 250,000 cars, on the roads and one million riders of public transport. In addition, hybrid schooling would address shortage in classrooms," he added.

Vincent Rondaris, president of the Nagkakaisang Samahan ng Nangangasiwa ng Panlalawigan ng Bus sa Pilipinas, Inc., said the government should steer away from car-centric policies.

"We should have long-term solutions including the creation of a Mega Manila Transport Authority that will be in charge of a unified traffic system and the issuance of all transport franchises for land, sea, rail, and air operating in Mega Manila; develop a credible database to determine patterns and volumes of commuters and transfer of government offices away from congested areas," Mr. Rondaris said.

Meanwhile, Supply Chain Management Association of the Philippines President Pierre Carlo Curay said Philippine costs as a share of sales are the highest in the Association of Southeast Asian Nations at 25%, compared to an average of 10% in developing countries.

"Transport faces a lot of challenges in terms of policies as it is one of the primary focus of penalties that slows down traffic but increases costs. Examples of these are the truck ban, single lane, and number coding scheme which adds to the cost of deliveries. If the cost of transport is high, the cost of commodities also increases," Mr. Curay said.

"Existing policies only allow deliveries once every two days and if you can deliver only that little, that is basically doubling your cost. The best way to have deliveries is if you can deliver thrice or thrice per day and that will significantly lower the cost," he added.

Christian Martin R. Gonzalez, executive vice-president of the International Container Terminal Services, Inc., proposed the establishment of purpose-built infrastructure to support the movement of cargo.

"With all the consumption that is being driven out of Metro Manila, we must ensure that we plan the infrastructure as well as the services that surround it in such a way that it facilitates movement," Mr. Gonzalez said. — **Revin Mikhael D. Ochave**

OPINION

A valid assessment emanates from a valid authority

LET'S TALK TAX
PARALUMAN ANDRES-NEAGOE

Yesterday's election was a defining moment for all Filipinos as voters selected the country's next leaders. The sovereignty of the people manifested itself once again, with hopes high that elected government officials and representatives embody their aspirations and dreams. Representatives of the people are there with a mandate from the people. Thus, whenever an elected official exceeds the authority delegated to him, he acts without legitimacy, and such authority may be withdrawn.

The same is true in tax assessment cases — the BIR's power exercised without authority is void. Thus, an assessment without a valid Letter of Authority (LoA) cannot prosper and must be withdrawn.

An LoA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers and enables the revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax.

As set forth in Section 6 (A) of the Tax Code, as amended, the authority to examine and assess the taxpayer for the correct amount of tax is restricted only to the CIR or his duly authorized representatives such as the Deputy Commissioner, Assistant Commissioners (ACIRs) and Head Revenue Executive Assistant (HREA).

However, by way of exception, Section 10 (c) of the Tax Code, as amended, allows the Revenue Regional Directors to issue an LoA in favor of revenue officers performing assessment functions in their respective region and district offices for the examination of any taxpayer within such region. Thus, the issuance of an LoA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives. Therefore, before any revenue officer can conduct an examination or assessment, there must be a grant of authority, in the form of an LoA. In the absence of such an authority, the assessment or examination is a nullity.

In a recent Court of Tax Appeals (CTA) decision (CIR vs. EDS Manufacturing, Inc., CTA EB No. 2411, promulgated on April 22, 2022), the CTA nullified the Final Decision on Disputed Assessment issued against the taxpayer and cancelled the tax assessment worth P223.8 million of the taxpayer because the names of the revenue officers who actually examined and recommended the PAN were not found in the LoA.

The CTA held that the LoA is the concrete manifestation of the grant of authority bestowed by the Commissioner of Internal Revenue (CIR) or his authorized representatives to the revenue officers. The LoA gives notice to the taxpayer that it is under investigation for possible deficiency tax assessment and at the same, it authorizes or empowers a designated revenue officer to examine, verify, and scrutinize a taxpayer's books and records in relation to internal revenue tax liabilities for a particular period. Hence, the absence of such an authority renders the assessment or examination a patent nullity.

The CTA emphasized that the issuance of a valid LoA by the CIR or his duly authorized representatives in favor of revenue officers performing assessment functions, except when the examination is conducted by the CIR himself, or the BIR officials duly authorized by law, is a pre-requisite for the validity of their tax examination and assessment. It stated that a LoA is not a general authority to any revenue officer. It is a special authority granted to a particular revenue officer. Hence, the claim of the petitioner CIR that the continuation of the examination of a taxpayer may be re-assigned to another revenue officer and group supervisor within the same RDO without issuing a new LoA is devoid of merit.

The CTA explained that the practice of reassigning or transferring revenue officers who are the original authorized officers named in the LoA, and subsequently substituting them with new revenue officers who do not have a separate LoA issued in their name, is in effect a usurpation of the statutory power of the CIR or his duly authorized representatives. Since the memorandum of assignment, referral memorandum, or such other internal document of the BIR directing the reassignment or transfer of revenue officers is typically signed by the revenue district officer or other subordinate official, and not signed or issued by the CIR or his duly authorized representatives, such issuance and its subsequent use as a proof of authority to continue the audit or investigation supplants the functions of the LoA since it seeks to exercise a power that belongs exclusively to the CIR himself or his duly authorized representatives.

Further, the CTA also disagreed with the petitioner's assertion that a valid LoA only applies to revenue officers in the revenue district office (RDO). It did not accept the contention of the petitioner that since revenue officers who performed the audit and examination were under the Office of the Commissioner of Internal Revenue (OCIR)-Large Taxpayer Service (LTS), the issuance of a valid LoA may be dispensed with. It pointed out that the necessity for the issuance of an LoA is premised on the persons who would perform the audit and examination of the taxpayer and is not based on the office where the revenue officers is stationed or detailed.

This has been consistently held by the court, and in the case of CIR vs. McDonalds Philippines Realty Corp., G.R. 242679, promulgated on May 10, 2021 (McDonald Case), no less than the Supreme Court emphasized the importance of identifying the revenue officer authorized to continue the tax audit or investigation in the LoA. It held that the issuance of an LoA prior to examination and assessment is a requirement of due process and not a mere formality or technicality. As part of due process requirement, taxpayers have the right to know that the revenue officers are duly authorized to conduct the examination and assessment, and this requires that the LoAs must contain the names of the authorized revenue officers. Accordingly, identifying the authorized revenue officers in the LoA is a jurisdictional requirement of a valid audit or investigation by the BIR, and therefore of a valid assessment.

In another case, the CTA in GS MTE Grains Corporation vs. CIR (CTA Case No. 8837 dated March 19, 2018) had the occasion to rule that failure to revalidate the LoA before the expiration of the 120-day period renders the LoA invalid, and the resulting assessment or examination a nullity. Under Revenue Memorandum Circular (RMC) No. 36-99, the revenue officer is allowed only 120 days from the date of the receipt of the LoA by the taxpayer to conduct the audit and submit the required report of investigation. If the revenue officer is unable to submit the final report of investigation within the 120-day period, he must then submit a Progress Report to the head office and surrender the LoA for revalidation. The CTA, in this case, held that by continuing with the audit beyond the prescribed 120-day period without submission of a Progress Report and without the surrender of the LoA for revalidation, the revenue officer acted without authority and the deficiency tax assessments issued against petitioner, arising from the audit conducted, is void ab initio.

In the exercise of the government's right to assess, it must, in the first place, ensure that any examination of the taxpayer by the BIR's revenue officers is properly authorized by those to whom the discretion to exercise the power of examination is given by statute. The power of the State to collect tax must be balanced with the taxpayer's right to substantial and procedural due process. In balancing the scales between the power of the State to tax and the constitutional rights of a citizen to due process of law, the scales must tilt in favor of the individual, for a citizen's right is amply protected by the Bill of Rights under the Constitution. Thus, while taxation is the lifeblood of the government, the power to tax must be exercised reasonably and in accordance with the prescribed procedures.

For the taxpayer, it would be helpful to always be mindful to check the validity of the LoA, that is, a LoA that emanates from a valid authority, for it pays to know that a void assessment bears no fruit.

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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