Taxes bring minimum price for pack of cigarettes to P82.49

THE floor price for the cheapest 20-stick pack of cigarettes will be P82.49 according to a tax calculation performed by the Philippine Tobacco Institute (PTI), an industry association.

The PTI, in a statement, was citing a June memorandum issued by the Bureau of Internal revenue (BIR), and computed that under this tax regime, the bulk of the final retail price will consist of excise and value-added taxes.

In Memorandum Circular No. 79-2022, the BIR provided a breakdown of the taxes on the cheapest pretax cigarettes on a per-pack basis. Apart from the P18.65 net cost of the cheapest cigarettes, excise tax adds P55 and a value-added tax P8.84, the PTI said.

The PTI said tobacco makers have to deal with competition from smuggled cigarettes, and made clear that compliant manufacturers have to follow the tax rules and sell at a certain price.

"It is estimated that P26 billion is lost in illicit tobacco trade annually. According to a Euromonitor report, six out of 10 cigarettes sold in Mindanao are illegal," it said.

In its statement, the PTI billed the taxes as a clear indicator of which cigarettes are smuggled or noncompliant, characterizing the tax scheme as designed "To fight smuggling and selling of illegal cigarettes."

The memorandum lists registered cigarette, tobacco, and vapor product brands that may be legally sold in the country or exported.

"The products must comply also with the requirement on graphic health warning and the affixing of BIR Tax Stamps, except for vapor products where Internal Revenue Stamps Integrated System (IRSIS) stamps are not yet available in the system," the BIR said.

Graphic health warnings should contain "text in Tagalog in front and English at the back; and the Tarsier or Vinta design tax stamps required as proof of tax payment," the PTI noted.

Violators are liable for fines of P200,000 at minimum and up to five years' imprisonment for breaching the graphic health warning rules, and a minimum of P1 million and up to eight years of imprisonment for violations on tax stamps.

"Any product not included in the list, no BIR Tax Stamp, absence of the mandated graphic health warning and product which is lower than the floor/ minimum price shall be considered as unauthorized/ illicit subject to seizure/ apprehension," the BIR said.

In the three months to March, the Bureau of Customs reported that cigarettes valued at P132.56 were seized. — **Diego Gabriel C. Robles**

Electronics industry says RCEP needed to ensure competitiveness

THE electronics industry expressed confidence in the industry's competitiveness, but urged the Senate to ratify the Regional Comprehensive Economic Partnership (RCEP) trade agreement to enhance its prospects.

Danilo C. Lachica, president of Semiconductor and Electronics Industries in the Philippines Foundation, Inc., said during BusinessWorld Live on One News Channel that the trade deal is good for the electronics sector since the deal will make its exports competitive.

"RCEP is favorable to us because… we have top countries that compete (in supplying) electronics products. If we are not part of RCEP, then… compared to those countries who are participating in RCEP, our exports, with tariffs and everything, will be more expensive," Mr. Lachica said.

Mr. Lachica added that the electronics industry's competitive advantage lies in its work force.

"The biggest asset we have in the Philippines is the productivity of our labor. If we can just rationalize holidays and address that, then we will continue to be advantageous and competitive with labor," Mr. Lachica said.

The RCEP, which started coming into force in various jurisdictions on Jan. 1, involves Australia, China, Japan, South Korea, New Zealand and the 10 members of the Association of Southeast Asian Nations (ASEAN). It is projected as the world's largest trade deal, accounting for about 30% of global gross domestic product.

The Philippines has yet to finalize its participation in the trade deal after the Senate was unable to give its concurrence in the previous Congress due to concerns over the lack of safeguards for the agriculture sector.

Senate concurrence is needed before the country can deposit its instrument of ratification to the ASEAN Secretary General. President Ferdinand R. Marcos, Jr. also needs to endorse the trade deal to the Senate.

Mr. Lachica urged the government to review the rationalization of incentives under Republic Act No. 11534 or the Corporate Recovery and Tax Incentives for Enterprises (CREATE) Act, citing the need to compensate for the Philippines' high operating costs.

"The thing is power and logistics are still big handicaps. We are hoping that the operating costs can be significantly reduced. That's really the premise for requesting a review of the incentives because at least, we have something to offset the high operating cost to give the multinationals the rationale and the reason to locate in the Philippines," Mr. Lachica said.

"We have observed about $3.2 billion of capital flight and we hope that the situation does not get worse. We are at a disadvantage compared to our ASEAN neighbors. They have more generous incentives," he added. — **Revin Mikhael D. Ochave**

BPO employees insist on feasibility of 100% work-from-home arrangements

CALL CENTER workers said 100% work-from-home (WFH) arrangements are workable following a government ruling setting limits on hybrid work in the Information Technology and Business Process Management (IT-BPM), insisting that companies should be allowed to adopt flexible work arrangements for safety reasons.

"We assert that a 100% permanent WFH not only has a legal basis but a moral one, due to the increasing number of coronavirus disease 2019 (COVID-19) cases," Alliance of Call Center Workers Co-Convenor Emman D. David said in a mobile phone message.

The IT-BPM industry, also known as the business process outsourcing (BPO) sector, is required by tax law to conduct 100% of its work within the premises of economic zones if it is to enjoy tax incentives, though this rule was relaxed during the pandemic.

The Fiscal Incentives Review Board (FIRB) issued Resolution No. 017-22, dated June 21, temporarily authorizing registered IT-BPM firms to operate on a 70% onsite and 30% WFH (70:30) basis until Sept. 12 without affecting their fiscal incentives, which are governed by Republic Act No. 11534 or the Corporate Recovery and Tax Incentives for Enterprises (CREATE) law.

"As a temporary measure under Rule 23 of the CREATE Act implementing rules and regulations, registered business enterprises (RBEs) of the IT-BPM sector may be allowed by their respective investment promotion agencies to continue implementing WFH arrangements without adversely affecting their fiscal incentives under the CREATE Act from April 1, 2022 until Sept. 12, 2022 only," according to the resolution.

At the height of the pandemic, the FIRB issued Resolution No. 19-21, which had allowed registered IT-BPM firms to offer 90% WFH and 10% onsite (90:10) work arrangements while still enjoying tax incentives. This resolution expired on April 1.

"Restoring the previous 90% work-from-home setup beyond Sept. 12 would also mitigate the impact of high inflation and ease the burden carried by our public transport system. We are reaching out to pertinent government agencies regarding this and we hope they can grant us a dialogue," Mr. David said.

In a separate statement, PEZA Officer-in-Charge Director General Tereso O. Panga said that the agency will continue to partner with the industry to make hybrid work arrangements more permanent.

"Rest assured that we will continue to work with our respective stakeholders and partner agencies to come up with a win-win strategy that will institutionalize the implementation of hybrid work arrangements as we promote a competitive investment climate in support of our economic zone investors and the continued revival of the economy," Mr. Panga said. — **Revin Mikhael D. Ochave**

More sanctions on Russia seen bringing crude to $200 per barrel in worst case

ADDITIONAL sanctions on Russia if it escalates the Ukraine war could lead to higher pump prices paid by consumers in Asia, with the crude oil price benchmark for the region possibly rising as high as $200 per barrel, the Asian Development Bank (ADB) said.

The projection was contained in a report, the Asian Development Outlook 2022 Supplement.

The bank said the main driver for prices will be the supply-demand gap of about 3.5 to 7 million barrels a day, as suppliers fall short of their targets amid supply chain disruptions, leveraged positions, and rising costs, the ADB said.

Rizal Commercial Banking Corp. (RCBC) Chief Economist Michael L. Ricafort said $200 crude is likely in the event of "further sanctions on Russia, and if Russia retaliates using oil (and) energy supplies as leverage."

"That's beyond our control. Rich countries can do that anytime in anyway they want. It›s really possible given that they are taking the economic approach to stop the war," said John Paolo R. Rivera, an economist at the Asian Institute of Management.

Oil prices peaked at $140 per barrel ($180 in today's money) in June 2008, absent of any geopolitical issues, the ADB added.

The Philippines is highly dependent on oil imports, making its economy sensitive to global oil price swings.

"While I believe we have supply, we might not be able to manage prices as we have seen in previous months," Mr. Rivera said in a Viber message.

The ADB said its scenarios for developing Asia include, on the optimistic end, a short-term shock in the remaining months of the year, in which gross domestic product growth is unaffected and inflation hits 5.1% before easing to 2.4% in 2023.

Last week, the ADB downgraded its 2022 growth forecast for developing Asia to 4.6% from the 5.2% projection in April.

It also raised its inflation forecast for this year to 4.2% and next year to 3.5%.

"The more plausible scenario is the war escalating in conjunction with a $200 per barrel price shock (which) will set off significant secondary effects. One possibility is an increase in inflation expectations that requires additional monetary policy tightening, which will also result in falling consumer confidence and business sentiment," ADB said.

In such a case, the region will post downgraded growth of 3.2% in 2022 and 4.5% in 2023. The latter is lower than the 5.2% forecast for that year.

At the same time, inflation will increase to 5.8% and 5.3% in 2022 and 2023 respectively.

The severe scenario involves global financial turmoil in 2023 driven by expectations of heightened inflation and monetary policy tightening, with developing Asia growing by only 2.2% and several economies contracting.

Nonetheless, RCBC's Mr. Ricafort said that global oil prices have already declined to their lowest levels in about four months, with Nymex crude oil falling to $95 from its $130 peak during the Russia-Ukraine conflict.

"Some COVID-19 lockdowns in China, which is the world's second largest economy, also led to the recent declines in the prices of global crude oil and other major global commodities," he said in a Viber message.

While the ADB projects elevated oil prices relative to prices last year, the possibility of $200 per barrel remains low after the European Union decided to phase out Russian oil imports gradually.

"Doing this rather than abruptly ending imports will allow for an orderly transition to alternative supplies and keep prices more stable and affordable for consumers," the ADB said.

"Further reduction of reliance on imported crude oil (and) petroleum products would (be) among the structural solutions, by increasing the shift to more renewable power sources such as solar, wind, hydro, (and) geothermal, as well as accelerating the shift to electric vehicles," Mr. Ricafort said.

"Conservation measures would also help reduce demand for imported crude oil (and) petroleum products," he added.

The Philippine government's economic assumptions are for Dubai crude — the price benchmark for Asia — to average $90-$110 per barrel this year, $80-100 per barrel in 2023, and $70-90 per barrel from 2024 to 2028. — **Diego Gabriel C. Robles**

OPINION

Cross-border exchange of tax-related information

LET'S TALK TAX
MARICEL P. KATIGBAK

With the continuing improvement of information and technology, it is becoming easier and easier for taxpayers to transact business on a global scale. While this situation provides a number of opportunities, issues with tax administration appear to be an inevitable consequence. One of the main issues is the risk the taxpayer will shift revenue to a low-tax country.

Thus, in an effort to deter tax fraud and evasion, the various tax jurisdictions have resorted to exchanging information. The Bureau of Internal Revenue (BIR) issued Revenue Regulation (RR) 11–2022. It prescribes the guidelines for the spontaneous exchange of taxpayer specific rulings between the Philippines and other countries to ensure the timely exchange of information.

The spontaneous exchange of information provides tax administrators access to timely information on rulings that have been granted to a foreign related party or a permanent establishment of their resident taxpayer, which can be used in conducting risk assessments.

Information subject to exchange include rulings related to preferential regime; cross-border unilateral Advance Pricing Arrangements (APAs) and any other cross-border unilateral tax ruling covering transfer pricing or the application of transfer pricing principles; cross-border rulings giving a unilateral downward adjustment to the taxpayer's taxable profits in the country giving the ruling; Permanent Establishment (PE) rulings; and Related party conduit rulings.

How will the above spontaneous exchange of information affect Philippine taxpayers?

In RR 11-2022, the BIR mentioned the following:

- If the past ruling does not contain sufficient information to enable identification of the relevant countries with which the information needs to be exchanged, the BIR may obtain information from the domestic withholding agent or from a representative in the Philippines. These past rulings pertain only to PE rulings or rulings concerning the existence or absence of a PE of a foreign enterprise in the Philippines that were issued either:

  a. On or after Jan. 1, 2015 but before Sept. 1, 2017; or

  b. On or after Jan. 1, 2012 but before Jan. 1, 2015, provided they were still in effect as of Jan. 1, 2015.

- With regard to future rulings, the BIR may require the amendment of the ruling process, and if necessary, the amendment of the BIR Forms that must be submitted by the taxpayer when requesting a confirmatory ruling, and the inclusion of transfer pricing documentation as part of the documentary requirements among others.
- Also, for those rulings exchanged with the BIR, if it is established, upon evaluation, that the ruling will aid the tax examiners in their tax investigation, a copy thereof shall be immediately forwarded to the Revenue District Office having jurisdiction over the domestic taxpayer.

Hence, at the very least, a Philippine taxpayer may be asked for information by the BIR; there could also be changes in the taxpayer's submission of request for BIR rulings, and a Philippine taxpayer may also be affected by the exchange of information during a BIR audit investigation.

It will also be noted above that, basically, the covered entities of the exchange of information are the related parties.

WHAT SHOULD THE PHILIPPINE TAXPAYERS DO THEN?

The following should be considered by Philippine taxpayers:

1. Ensure that the Philippine taxpayer is dealing with its foreign related parties on an arm's length basis.

According to the Organization for Economic Cooperation and Development (OECD), arm's length means that a transaction between related entities reflects the conditions and remuneration set in comparable transactions between unrelated entities. Thus, in transacting business with foreign related parties, transfer pricing analysis must be considered to verify whether the transactions with related entities comply with the arm's length principle. The pricing of the goods or services must be assessed, to ensure that this is comparable to the pricing of independent entities in more or less similar conditions and circumstances.

2. Document the reasonableness of the transaction.

The issuances of the BIR on transfer pricing detail the requirements for the submission of transfer pricing documentation (TPD). The authorities have given taxpayers certain guidelines to follow in preparing TPD in compliance with transfer pricing rules. The TPD will serve as the taxpayer's proof that its transactions with related parties are not arbitrarily priced, and that there is no malicious shifting of revenue and expenses among the related parties.

The above actions would be helpful in a taxpayer's preparations for possible application for a tax ruling with the BIR in the future. At any rate, even without thinking about a possible application for a tax ruling in the future, a taxpayer is required to ensure that its transactions with related parties are reasonable and not carried in a manner leading to tax evasion.

As we know, cross-border transactions are growing rapidly as technology has been making the world smaller. The tax authorities have also been adapting to this. The exchange of information is part of the process of addressing possible gaps in the tax system. As taxpayers, in turn, we should also take care to ensure that we comply with international tax principles and best practices.

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.

MARICEL P. KATIGBAK is a senior manager of the Tax Advisory & Compliance division of P&A Grant Thornton, the Philippine member firm of Grant Thornton International Ltd.
pagrantthornton@ph.gt.com