

## Rains fail to bring Angat water to ‘ideal’ levels

THE National Water Resources Board (NWRB) said that the volume of water at Angat Dam remains below the 212-meter level, which is deemed to provide an adequate safety margin for supply during the dry months, despite the rains brought by recent typhoons.

Sevillo O. David, Jr., NWRB executive director, said in a Lag-ning Handa briefing on Monday

that Angat Dam's water level is currently around 189.4 meters.

“It is in normal operating level, but not ‘comfortable’ to supply the needs of Metro Manila residents and farmers in Bulacan and Pampanga,” Mr. David said.

Mr. David described the current water supply situation for Metro Manila as limited. Angat Dam is the main source of water

for Metro Manila, accounting for about 90% of the capital's potable water.

“Angat Dam's water level must reach around 212 meters by year-end to ensure enough water supply in Metro Manila and irrigation for farmers especially for the summer months,” he added.

Angat Dam also supplies irrigation water for Bulacan and some Pampanga rice farms

through Bustos dam, which distributes water from Angat.

Mr. David said that the NWRB is also working with other government agencies like the Department of Health (DoH) to ensure good water quality amid a rise in cholera cases.

At a briefing last week, the DoH reported 3,729 active cholera cases. — **Ashley Erika O. Jose**

## Output of 15 hydro projects to be offered in next auction

THE Department of Energy (DoE) said it will offer the output of 15 hydropower projects with a combined capacity of 101.35 megawatts (MW) at an upcoming competitive selection exercise.

Energy Undersecretary Giovanni Carlo J. Bacordo said nine of the hydro complexes are on Luzon, two in the Visayas and five in Mindanao.

The open and competitive selection process invites bids for power output and awards agreements following a technical and financial review.

Mr. Bacordo said offering hydro capacity helps the DoE meet its goal of increasing the share of renewable energy (RE) in the power mix to 35% by 2030, and 50% by 2040.

The DoE also announced that it is planning to conduct another round of the Green Energy Auction in June.

“This time we will study what will be the requirements, taking into account the RPS (Renewable Portfolio Standards), grid requirements,” Energy Assistant Secretary Mylene C.

Capongcol told reporters on the sidelines of the Norway-Philippines Maritime and Energy Conference last week.

Ms. Capongcol said that the second auction round for (RE) could be bigger than the first, at which the DoE awarded 19 contracts to deliver 2,000 MW of RE under the Green Energy Auction Program.

Ms. Capongcol said the department is still considering whether to include hydropower and impounding geothermal in the green energy auction. — **Ashley Erika O. Jose**

## DoTr urges expanded regional partnerships after EU air travel deal

THE Transportation department said on Monday that it will work with partners within Southeast Asia to help develop the region's transport connectivity, after the signing of an air transport agreement with the European Union (EU).

“In his first ASEAN (Association of Southeast Asian Nations) Transport Ministers Meeting over the weekend, Secretary Jaime J. Bautista stressed the Philip-

ppines will push for agreements and areas of partnership that will further develop the region's transportation potential,” the department said in a statement.

In his speech, Mr. Bautista noted that the Philippines “is supportive and is one with the other partner nations in pushing for agreements and areas of partnership.”

Mr. Bautista was among the signatories on Monday to the

world's first inter-region aviation cooperation deal, the ASEAN-European Union Comprehensive Air Transport Agreement, one of the highlights of the 28<sup>th</sup> ASEAN Transport Ministers Meeting.

The agreement is aimed at reinforcing connectivity and post-pandemic economic recovery between ASEAN and the EU.

“This agreement will prove to be a game-changer as both

ASEAN and EU countries slowly recover and rebuild from the effects of the pandemic,” Mr. Bautista said.

“The agreement will have a profound impact in the areas of trade and tourism for ASEAN and the EU,” he noted. It will help “rebuild air connectivity between ASEAN and Europe which was suddenly suspended by the pandemic.” — **Arjay L. Balinbin**

## Business groups back ARTA against calls for abolition

BUSINESS organizations said they do not support the Ombudsman's proposal to abolish the Anti-Red Tape Authority (ARTA), saying that the agency is needed to help improve government services.

In a joint statement on Monday, 32 business groups said the abolition proposal was a matter of concern, adding that “the Ombudsman and the ARTA complement each other's functions; both should be working together.”

In September, Ombudsman Samuel R. Martires urged Senators to abolish ARTA and repeal the law that created the agency.

According to Mr. Martires, Republic Act No. 11032 or the Ease of Doing Business and Efficient Government Service Delivery Act, which created the ARTA, “encroaches” upon the powers of the Ombudsman.

The business groups said ARTA has delivered on its mandate to make transactions with government more seamless.

“Approvals for permits, licenses, etc. have been simplified and greatly speeded up. The 3, 7, 20 requirement, detailing the number of days within which approval must be granted, has seen many provincial government agencies and local governments introduce procedures to attain this swift attainment of approval,” they said.

“We would like to appeal to the Ombudsman to work with the ARTA, so they may together give us the improvement in government services we need, and continue the upgrading that has been started so effectively,” they added.

ARTA Officer-in-Charge and Undersecretary Ernesto V. Perez said that the agency has no intention of encroaching on the Ombudsman's jurisdiction.

Mr. Perez added that the ARTA has contacted the Office of the Ombudsman (OMB) for clarification.

“While we continue to advocate for the efficiency of government service delivery, we welcome the collaboration with the OMB to strengthen and better implement the Ease of Doing Business Law for the greater benefit of the Filipino people,” Mr. Perez said.

Signatories to the joint statement were Alyansa Agrikultura, American Chamber of Commerce of the Philippines, Anvil Business Club, Australian-New Zealand Chamber of Commerce Philippines, Canadian Chamber of Commerce of the Philippines, Cebu Business Club, Cebu Leads Foundation;

Connected Women, Employers Confederation of the Philippines, European Chamber of Commerce of the Philippines, Federation of Indian Chambers of Commerce (Phil) Inc., Filipina CEO Circle, Financial Executives Institute of the Philippines, Fintech Alliance Philippines, Green EDSA Movement;

Institute Of Corporate Directors, Investment House Association of the Philippines, IT & Business Process Association of the Philippines, Inc., Justice Reform Initiative, Makati Business Club, Malaysia Chamber of Commerce and Industries Philippines;

Management Association of the Philippines, Microfinance Council of the Philippines, People Management Association of the Philippines, Philippine Center for Entrepreneurship Foundation - Go Negosyo, Philippine Chamber of Commerce & Industry;

Philippine Council of Associations and Association Executives, Philippine Exporters Confederation, Inc., Philippine Franchise Association, Philippine Retailers Association, Procurement and Supply Institute of Asia, and Semiconductor and Electronics Industries in the Philippines Foundation, Inc. — **Revin Mikhael D. Ochave**

## Plastics manufacturers say safeguard duty on raw materials to raise consumer prices

THE safeguard duties imposed on raw materials used in plastic products will raise the prices paid by consumers, the plastics manufacturing industry said.

The duties were imposed on high-density polyethylene (HDPE) granules and pellets, a measure which the Philippine Plastics Industry Association, Inc. (PIIA) called burdensome for the public, to which the costs will be passed on.

Consumers “will be on the losing end as they have to contend with the increase in prices and this also contributes to inflationary pressures. Their take home pay will be affected,” the PPIA said in a statement on Monday signed by PPIA President Aaron Timothy Lao and PPIA 1<sup>st</sup> Vice-President Benjamin Chua.

“Products such as packaging for basic necessities such as food and beverages, personal care; as well as cosmetics (and

products used by industries like) agriculture and fisheries, pharmaceuticals, medical and health institutions, construction, public utilities, autos, retail, and others will be affected by the additional safeguard duty,” the group added.

The Department of Trade and Industry issued Department Administrative Order 22-13 dated Sept. 30 imposing safeguard duties on imported HDPE pellets and granules for three years. The safeguard duty is P1,338 per

metric ton (/MT) in the first year, P1,271/MT for the second, and P1,208/MT for the third.

The safeguard duty petition was originally filed by JG Summit Petrochemical Corp., (JGSPC) which was later taken up by JG Summit Olefins Corp. after a merger earlier in the year.

“The safeguard duty favoring JGSPC will also (exert) more pressure on plastic product manufacturers. Imported finished products are being imported at 0% duty

leaving manufacturers at a price disadvantage. This will result in an influx of imported finished plastic products. This will cause more job losses while we are all recovering from the pandemic,” the PPIA said.

“The industry... will be left with no choice but to adjust its sails in order to survive. Recently, the plastic industry has been facing numerous adversities — the enactment of the Extended Producers Responsibility Act (and) the pending

excise tax bill for single-use plastics. Not to mention, plastic-banning ordinances by local government units,” the PPIA said.

According to the PPIA, the plastic converter industry employs over 70,000 and generates P149 billion in revenue. It was citing data from the Statistics of Manufacturing Establishments by Industry Group: Annual Survey of Philippine Business and Industry report, issued in 2020. — **Revin Mikhael D. Ochave**

### OPINION

## Fringe with benefits? Not anymore for equity-based compensation under RR 13-2022

A little over two months before the year-end holidays, the hearts of many are starting to feel the warm with all the colored lights and family gatherings, along with the never-ending Michael Buble, Jose Mari Chan, and the occasional Christina Aguilera Christmas songs that we start to hear even in our sleep. Then again, for most of us who are on the “giving end” during the holiday season, there's always that nagging thought in the back of our minds — the “holiday gastos.” It's that time of the year when we may have to double check our bank accounts to verify that we can afford that Christmas wishlist hanging by the tree, or whether it's time to consider availing of that company benefit we have left untouched for some time.

Those who are considering increasing their holiday funds by availing of benefits falling under equity-based compensation, specifically those who are occupying supervisory and managerial positions, may have to look at a newly-released BIR regulation, RR 13-2022, although it might not be the most heartwarming news this season.

### EQUITY-BASED COMPENSATION

Equity-based compensation, as some of us may already be familiar with, is an additional benefit given to employees in the form of an option to buy shares of stock (of the employer's company or some other company), which may be exercised for a given period, giving such employees an opportunity to own shares in a company. It is an incentive for services rendered by the employees, and is typically dependent on performance, outstanding business achievements and exemplary organizational, technical or business accomplishments. It covers all types

of employee equity schemes (i.e., stock options, restricted share awards, stock rights, and restricted stock units).

### INCOME TAX TREATMENT OF EQUITY-BASED COMPENSATION PRIOR TO RR 13-2022

The peculiar aspect of equity-based compensation, unlike other forms of compensation, is that it is taxed not at the time of grant, but rather at the time of the exercise of the option by the grantee. Upon the exercise of the option, it is considered additional compensation equivalent to the difference of the book value/fair market value of the shares, whichever is higher, at the time of the exercise of the stock option and the price fixed on the grant date. In other words, the taxation is deferred until the time the employee/grantee exercises the option.

Prior to the issuance of RR 13-2022, there was a difference in the tax treatment of equity-based compensation between a rank-and-file employee and those who occupy supervisory or managerial positions.

Under RMC 79-2014, which was the governing rule prior to the amendment introduced by RR 13-2022, those occupying supervisory and managerial positions were accorded preferential treatment in terms of the taxability of equity-based compensation because of the fact that the amount received from the exercise of the grant will not form part of gross compensation but is taxed as a fringe benefit.

A fringe benefit, to refresh our memory, is any good, service, or other benefit furnished or granted in cash or in kind by an employer to an individual employee (except rank-and-file employees).

Tax treatment as a fringe benefit may be considered better in the sense that:

- 1.) the value of the equity grants is determined by dividing its actual monetary value by 65%, in accordance with section 33 of the National Internal Revenue Code, as amended; and

- 2.) The fringe benefit tax is paid by the employer.

It is one of those instances where those of higher positions (i.e., those who earn more) enjoy preferential treatment in terms of tax liability. Availing of equity-based compensation is more favorable for those occupying supervisory and managerial positions, precisely because of that bit of tax savings. This is strange considering that it is a basic principle of a sound tax system that taxation should be based on one's ability to pay; if you have more, you should be paying more.

Then again, the difference in the treatment has been removed by RR 13-2022. With the amendment, both rank-and-file employees and those occupying supervisory and managerial positions are now on a level playing field in terms of the tax implications of equity-based compensation.

### INCOME TAX TREATMENT OF EQUITY-BASED COMPENSATION UNDER RR 13-2022

Revenue Regulations 13-2022 expressly characterizes equity-based compensation, once exercised, or availed of, as additional compensation for services rendered by employees. This means that the amount accruing from such grant, upon exercise of the option, forms part of the gross income of the employee, subject to income tax and consequently, to withholding tax on compensation.

The basis of the taxability of equity-based compensation is Section 32(A) of the National Internal Revenue Code as amended, which defines gross income as all income derived from whatever source, including compensation for

services in whatever form paid, including but not limited to fees, salaries, wages, commissions, and similar items. As implemented Section 2.87.1 (1) (A) of RR 2-98 explicitly states that:

“SECTION 2.78.1. *Withholding of Income Tax on Compensation Income.* —

xxx xxx xxx

(A) *Compensation Income Defined.* —

xxx xxx xxx

(1) *Compensation paid in kind.* — *Compensation may be paid in money or in some medium other than money, as for example, stocks, bonds or other forms of property. If services are paid for in a medium other than money, the fair market value of the thing taken in payment is the amount to be included as compensation subject to withholding. If the services are rendered at a stipulated price, in the absence of evidence to the contrary, such price will be presumed to be the fair market value of the remuneration received. If a corporation transfers to its employees its own stock as remuneration for services rendered by the employee, the amount of such remuneration is the fair market value of the stock at the time the services were rendered.*» (Emphasis ours)

With the current regulation, the same rule will apply regardless of the status of the grantee-employee, who could either be rank-and-file or occupying a supervisory or managerial position. The regulation also explained that Section 32 does not make a distinction for purposes of applying tax implication on all forms of compensation, including equity-based compensation.

From there, we can see the underlying reason for the amendment of RMC 79-2014, which is the fact that there really is no adequate basis to make a distinction as to the tax treatment of equity-based compensation for rank-and-file employees, and those holding supervisory and managerial positions.

### REPORTING REQUIREMENTS UNDER RMC 79-2014

For the information of the employer/grantor, the reporting requirement under RMC 79-2014 was retained, to wit: 1. Submission of a statement under oath, containing the mandatory information, within 30 days from the grant of the option and 2. Additional report within 10 days from the exercise of the option.

The employer/grantor would still have to comply with the same reporting requirement under RMC 79-2014, except for the fact that it is no longer required to report the paid fringe benefit tax, precisely because it has already been removed.

On the one hand, it can be said that equalizing the tax treatment with regard to equity-based compensation for both rank-and-file employees and those occupying supervisory and managerial positions is a step towards a more equitable tax system. Removing the preferential treatment, in terms of tax liability, definitely sounds like an effort to make the rules on equity-based compensation more just. Could we now hope for a more equitable and just implementation of the tax law? Thoughts?

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ALEXIS DY DELA CRUZ is an associate from the Tax Advisory & Compliance division of P&A Grant Thornton, the Philippine member firm of Grant Thornton International Ltd.  
**pagrantthornton@ph.gt.com**

