Ports report increased passenger, cargo volumes in third quarter

THE Philippine Ports Authority (PPA) said on Wednesday that passenger and cargo volumes rose sharply in the third quarter as pandemic restrictions were relaxed.

The PPA said in a statement that passenger volume for the period rose 233.54% from a year earlier to 15.71 million passengers as mobility improved with the waning of the coronavirus outbreak.

Meanwhile, container traffic rose 9.7% year on year to 2.03 million twenty-foot equivalent units (TEUs).

The PPA said domestic container volume rose 9.47% year on year to 759,884 TEUs.

Foreign containers rose 10.4% year on year to 1.27 million TEUs.

The PPA booked net income for the nine months to September of P7.16 billion, it said, off revenue of P14.86 billion.

In its financial report for the third quarter of 2021, the PPA said net income was P6.2 billion and revenue P12.82 billion.

Transportation Secretary Jaime J. Bautista has said that the port regulator is pursuing further upgrades to its operations.

"Initially, the agency is targeting those low-hanging fruit and slowly working from there," the PPA said in a statement. — **Arjay L. Balinbin**

MARIAH DALUSONG-UNSPLASH

Spot market power prices decline in early November

THE Independent Electricity Market Operator of the Philippines (IEMOP) said electricity spot market prices in early November declined by P1.14 per kilowatt-hour (kWh) to an average of P8.08 per kWh, from P9.22 in October.

Christian Karla A. Rica, IEMOP knowledge management specialist, said in a virtual briefing on Wednesday that supply levels trended upward in early November, averaging 13,651 megawatts (MW), while demand declined to 10,083 MW as of Nov. 13, pulling prices lower.

Demand on the Wholesale Electricity Spot Market (WESM) had risen in October to P9.22 per kWh from P9.12 in September due to outages at major coal, geothermal, oil-based, and natural gas plants.

Electricity companies pay the spot premium for WESM-sourced power supply when their long-term providers are unable to deliver adequate volumes.

IEMOP said generators with higher offer prices were dispatched to make up for the needed energy requirements.

The average supply in October was 13,478 MW, down 0.89% month on month.

October demand increased 1.61% month on month to 10,810 MW. — **Ashley Erika O. Jose**

German companies signal improved business sentiment

GERMAN companies are expecting their prospects to improve, according to the results of a global survey released by the German-Philippine Chamber of Commerce and Industry (GPCCI).

The GPCCI said the World Business Outlook report for Fall 2022 released on Wednesday found that 53% of participants expect the situation to improve for their companies, higher than the Fall 2021 (32%) and Spring 2022 (47%) survey results.

Some 41% of survey participants expect their situation to remain unchanged while 6% forecast it to worsen.

According to the GPCCI, the survey included 68 companies involved in the Philippine market in fields like manufacturing, construction, trade, and services.

Of the Philippine segment of the survey, 61% of respondents expect their business to improve in the next 12 months while 13% expect conditions to deteriorate.

Some 39% described their prospects over the next 12 months in the Philippines as satisfactory, while 44% forecast conditions to remain unchanged. Some 50% said they plan to maintain their current staffing levels.

"We are glad to see that companies still (expect) a better business situation in the Philippines despite growing global economic impediments," GPCCI Executive Director Christopher Zimmer said.

The three biggest risks identified by respondents for the next 12 months include supply chain disruptions (56%), energy prices (50%), and exchange rates (43%).

Philippine locators described the three main advantages of being based here as the skilled workforce (54%), labor costs (48%), and supplier network (32%).

"With the increasing global impacts of the energy crises and supply chain disruptions, the German business community is considering looking for new suppliers and relocating their production to boost operations," GPCCI President Stefan Schmitz said.

"We ask the new government to take advantage of this opportunity by using the policy reforms to attract more foreign direct investment inflows in the coming years," he added. — **Revin Mikhael D. Ochave**

House panel approves bill creating e-commerce bureau

A BILL proposing to establish an e-commerce regulator was approved by the House appropriations committee on Wednesday.

The proposed Internet Transactions Act cleared the committee as a substitute bill.

As envisioned, the E-Commerce Bureau will be an arm of the Department of Trade and Industry (DTI) and will be tasked with promoting the growth of the online economy.

President Ferdinand R. Marcos, Jr. cited the measure as one of 19 priority bills during his first State of the Nation Address. The House committee on trade and industry unanimously approved the measure on Aug. 24.

As passed by the appropriations panel, Section 8 was amended to give the Trade Secretary more authority to determine the bureau's composition.

The proposed bureau will oversee the entry of e-commerce businesses onto the DTI's Online Business Registry and support information-sharing on the industry across all levels of government.

The bill was approved on third reading by the House of Representatives in the last Congress, but stalled on second reading in the Senate. — **Matthew Carl L. Montecillo**

MUFG says Philippine growth upside has moved beyond base effects

THE Philippine economy has moved beyond the stage where any growth upside is due to base effects, Japan's MUFG Bank said on Wednesday, as it upgraded its 2022 forecast for gross domestic product (GDP) to between 7.5% and 8%, following a stronger-than-expected performance in the first nine months.

MUFG Senior Currency Analyst Jeff Ng said the Philippines may also exceed the bank's 6% forecast for 2023, citing "strong momentum" from 2022.

In August, MUFG released GDP forecasts for the Philippines of 6.7% this year and 6% in 2023.

"Given the strong numbers that we've seen in the (past) quarter... growth could really wedge between 7.5-8% for the rest of the year, assuming no significant material downside risk (emerges)," Mr. Ng said.

"There's also some upside risk to growth next year as well owing to the strong momentum that we have seen in the economic growth over the past few quarters, especially the positive Q3 number," he added.

GDP growth in the third quarter rose accelerated to 7.6% from 7% a year earlier and 7.5% in the second quarter, according to preliminary data from the Philippine Statistics Authority.

For the nine-month period, GDP growth averaged 7.7%, exceeding the government's 6.5-7.5% target.

According to Mr. Ng, Philippine growth has been driven by the economy's normalization since the coronavirus disease 2019 (COVID-19) pandemic.

"Private consumption and investment have been very strong since the COVID 19 pandemic. And it is not a matter of base effects anymore. Since the base effects have worn off, the numbers look fairly positive for the year ahead," he said.

Household consumption rose 8% year on year, easing from the 8.6% in the second quarter but still higher than the year-earlier 7.1%. Quarter on quarter, household final consumption grew by 5.7%.

Gross capital formation, the investment component of the economy, grew 21.7% in the third quarter, against 20.8% a year earlier and 21.1% in the second quarter.

Mr. Ng said the bank expects private consumption and investment growth to remain strong moving forward, mainly driven by remittances and infrastructure spending.

The Bangko Sentral ng Pilipinas (BSP) said on Tuesday that cash remittances coursed through banks rose 3.8% year on year to $2.84 billion in September, the highest cash total since July.

The strong dollar is thought to have encouraged OFWs to send more money home, where their families are dealing with rising prices of food, utilities and transport.

"We are likely to see lower inflation of 3.9% next year, compared to 5.5% this year," Mr. Ng said, adding that the bank expects the BSP to continue with its policy tightening in order to address inflation.

"We are expecting that the BSP (to) hike by at least another 75 basis points (bps) for the upcoming meeting (today). Perhaps there could be another 50-bp of rate hikes for December, but we have to firm up our view based on the latest developments in inflation," he said.

The Monetary Board is expected to raise key interest rates by 75 bps today to match the Federal Reserve's latest tightening move. The board has so far raised rates by 225 bps since May.

Inflation remained elevated as the fourth quarter started, surging to 7.7% in October. October also marked the seventh straight month that inflation breached the BSP's 2-4% target.

"Inflation should start to come off as some of the international food prices start to retreat and imported inflation will be less of an issue by next year compared to that of this year," he added.

Still, Mr. Ng warned that food inflation may hit 6% this year and 7.9% next year due to increases in meat, fish, and vegetable prices.

The peso may finally continue to rebound going forward as traders price in a slower pace of tightening by the Fed as inflation eases, Mr. Ng said.

US inflation slowed to 7.7% in October from 8.2% in September. Month on month, the consumer price index rose 0.4% after rising by the same margin in September.

The Fed has raised borrowing costs by 375 bps since March, including its fourth 75-bp rate hike recently.

"In light of these developments as well, there could be some potential strength and rebound in some of the currencies that have underperformed this year, including the peso," Mr. Ng said.

"The peso could be one of the currencies that may do better than some of (its) peers next year, assuming some of the risk factors do not materialize," he said.

The peso closed at P57.35 against the dollar on Wednesday, weakening from its P57.21 finish Tuesday. In the year to date, the peso has weakened by 11.1% from its Dec. 31 close of P51.

Mr. Ng also added that growth in business process outsourcing revenue and remittances may continue to support the peso this year. — **Keisha B. Ta-asan**

OPINION

Moving forward after the reversal of a BIR ruling

TAXWISE OR OTHERWISE

CHARILYN R. CALIWAG

When taxpayers are in doubt as to whether a specific provision of the Tax Code or regulations apply to their specific transactions, they sometimes seek an opinion or confirmation from the agency that implements the law or regulation. One may ask, does the touch-move rule apply to the issued ruling or confirmation, or can it still be reversed by the same agency that issued it.

By definition, rulings of the Bureau of Internal Revenue (BIR) reflect its official position on queries raised by taxpayers regarding the interpretation of tax laws. Unless and until the position is reversed, the taxpayer can rely upon the ruling as issued. In the event of reversal, it cannot apply retroactively if prejudicial to the taxpayer except in those cases provided for under the law. This rule was applied in a recent decision of the Court of Tax Appeals (CTA) *En Banc*.

For context, the BIR issued a ruling in 2006 in favor of the taxpayer, in which it held that the "conveyance of land and common areas of the Project in favor of the condominium corporation being without money consideration, *and is not in connection with a sale made to the condominium corporation, no income was generated and therefore no income and/or creditable withholding tax is payable and collectible."* Not being a sale, the same is not subject to the value-added tax (VAT) and documentary stamp tax (DST).

Thereafter, in 2009, the Commissioner of Internal Revenue (CIR) issued a Revenue Memorandum Circular (RMC) revoking the ruling by declaring the taxpayers' Build-to-Own model a pre-selling arrangement which should be subject to the aforementioned taxes. Under the scheme, the developer manages the construction of the condominium project and the individual investors/co-developers contribute funds for construction which are then pooled in a common fund, with the developer, as project manager, receiving a management fee.

A full-blown audit and investigation ensued as a result of the RMC. As the assessment was not resolved at the administrative level, the case was elevated to the CTA.

The BIR argued that the reversal of the taxpayer's ruling can be given retroactive application because the taxpayer deliberately misrepresented material facts in its request for a ruling. On the other hand, the taxpayer claimed that the BIR failed to prove any misrepresentation and/or bad faith on their part in securing the ruling.

The CTA *En Banc* denied the Petition of the BIR for lack of merit. It held that Section 246 of the Tax Code prohibits the retroactive application of a reversal of a BIR ruling if it is prejudicial to the taxpayer, unless any of the following exceptions is present:

1. Deliberate misstatement and omission of material facts in the return or documents;
2. Facts subsequently gathered by the BIR are materially different from the facts on which the ruling is based; or
3. The taxpayer acted in bad faith.

The reason behind the non-retroactivity provision is to preclude the BIR from adopting a position which is contrary to one previously taken that would result in injustice to the taxpayer or that would be contrary to the tenets of good faith, equity and fair play. Further, applying the doctrine of operative fact, the taxpayer has the right to rely upon a BIR ruling until the same has been reversed or overruled by the CIR or the Supreme Court. Since the sale transaction was treated as subject to income/withholding tax, VAT and DST by reason of the issuance of the RMC, the Court held that the taxpayer was prejudiced when the ruling was overturned, and thus the same should only be applied prospectively.

Further, the CTA *En Banc* held that the BIR failed to prove the existence of any of the aforementioned exceptions. It merely alleged that the taxpayer deliberately misstated material facts or acted in bad faith when it sought confirmation. Neither was there any proof that the co-development scheme employed by the taxpayer and the developer is actually a pre-selling arrangement.

Additionally, the change in position by the BIR did not originate from a subsequent learning of a fact misrepresented or withheld by the taxpayer but was merely due to a change in the tax consequences of the same set of facts presented at the time the ruling was sought. The Court emphasized that mere allegations are definitely not evidence. Without proof, the BIR cannot deprive the taxpayer of the right that it already obtained by the issuance of the ruling until its revocation.

Incidentally, it is worthwhile to note that this case was not decided unanimously as there is a dissenting opinion which holds that the revocation was valid and proper due to the taxpayer's misrepresentation of the facts, particularly for making it appear that the transactions under the scheme are not sale transactions when, in fact and law, they are taxable transactions as all the essential elements of a sales contract are present, and since the attributes of ownership of the condominium project are integrated in the agreement and are being exercised by the taxpayer.

In brief, a taxpayer may still rely on a ruling or confirmation issued by the BIR unless revoked due to deliberate misstatement and omission of facts or bad faith on the part of the taxpayer. At the end of the day, it is the taxpayer's responsibility to disclose all material facts necessary for the BIR to formulate its decision.

The views or opinions expressed in this article are solely those of the author and do not necessarily represent those of Isla Lipana & Co. The content is for general information purposes only, and should not be used as a substitute for specific advice.

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