Economic zone regulator signs on to Swiss-backed sustainability initiative

THE Philippine Economic Zone Authority (PEZA) has agreed to promote sustainability among locators by subscribing to a program promoted by the Swiss government and the Global Reporting Initiative (GRI) that will make exporters more accountable for their environmental practices.

In a statement issued Nov. 4, PEZA said the collaboration involving GRI and the Swiss government, will help make all components of the global supply chain more conscious of the sustainability of their operations.

"We all have the responsibility to raise our levels of consciousness and action towards sustainability. We must upgrade global and local value chains to be sustainable in a way that usage of resources promotes and protects the present and future generations' right for a clean environment," PEZA Deputy Director General for Operations Vivian S. Santos was quoted as saying in an Oct. 28 forum.

Thimon Fürst, deputy head of mission for the Swiss embassy in Manila, said an embrace of sustainability makes export enterprises accountable and transparent, which he said are important in creating trust all along the supply chain.

"Sustainability reporting is a vital step towards achieving smart, sustainable, and inclusive growth that balances long-term profitability. Investing in sustainability performance and reporting is good for business," Mr. Fürst said.

Mr. Fürst added that the collaboration of the Swiss Confederation State Secretariat for Economic Affairs, PEZA, and GRI creates an enabling environment for export enterprises and help them adapt sustainability reporting in all aspects of their business.

"It's a chance to craft together sustainability reporting standards that befit individual sectors. It also serves as a model for other regulatory institutions to follow and achieve a high reputability right for optimal outcome," Mr. Fürst said.

Senen M. Perlada, Philippine Exporters Confederation, Inc. executive vice-president, said involving exporters in the initiative would serve as a competitive advantage.

"This sector has to make adjustments not just to continue doing business but as a commitment to the global value chain and production network. We must focus on business continuity and being other-centered as we are all working together to ensure unhampered operations despite the challenges that may come such as in health and natural calamities," Mr. Perlada said.

PEZA and GRI will form a technical working group that will include locators to outline future sustainability reporting practices. — **Revin Mikhael D. Ochave**

Malampaya could have been used to temper gas prices — think tank

THE GOVERNMENT could have used the remaining gas from the Malampaya field as a stabilizing source of supply to temper price volatility in the gas market, instead of allowing control of the field to change hands, according to an alternative-energy think tank.

"In the interim and while securing genuinely long-term and affordable solutions in the form of renewables, handling Malampaya could have been a means for the government to temper price blows," Gerry C. Arances, executive director of Center for Energy, Ecology, and Development, said in a message to *BusinessWorld* on Saturday.

Mr. Arances said the government missed an opportunity by allowing the ownership transfer, which "makes no difference for consumers who still have to pay high electricity prices."

"The elephant in the room is the fact that the government merely acted like a spectator as these deals pushed through," he added.

Last month, Prime Infrastructure Capital, Inc. acquired the 45% stake of Shell Philippines Exploration BV (SPEX) in Service Contract 38, covering the Malampaya field. The DoE found Prime Infra technically, financially, and legally qualified to succeed Shell as the Malampaya operator.

The government's strategy of dealing with Malampaya's depletion — relying on liquefied natural gas (LNG) imports — has also been called not economically viable.

Alberto R. Dalusung III, an adviser on the energy transition to the Institute for Climate and Sustainable Cities, said in a Viber message to *BusinessWorld* on Saturday: "LNG does not appear to be an economic energy source currently and up to the medium term. Therefore, the only practical source of gas for the Philippines will be indigenous gas."

Mr. Dalusung said the government must intensify its focus on developing indigenous sources, and supported the Department of Justice (DoJ) legal opinion allowing full foreign investment in renewable energy projects.

"I have always taken a contrary position on the interpretation of some constitutional provisions that treat renewable energy sources such as solar and wind as if they were mineral resources, subject to state-defined limits on foreign participation. Renewable energy resources are not exhaustible and their proper use will not deprive future generations of the same resources. Thus, I welcome the DoJ opinion and support the Department of Energy (DoE) plan to open up renewable energy investments to 100% foreign participation."

The DoE has said imports of LNG will stabilize the natural gas supply and ensure the continued operation of five power plants with combined capacity of 3,453 megawatts which currently run on Malampaya gas.

The department has approved six proposed LNG terminal projects. Of the approved projects, First Gen Corp. and Atlantic Gulf & Pacific Co. have said they expect to start taking delivery of gas in 2023.

About 20% of the country's total power requirements, and 27% of the Luzon grid, is serviced by Malampaya, which is approaching commercial depletion. — **Ashley Erika O. Jose**

GOCC subsidies more than double in September

SUBSIDIES provided to government-owned and -controlled corporations (GOCCs) more than doubled in September, the Bureau of the Treasury (BTr) reported.

The BTr reported that budgetary support to GOCCs jumped 158.2% year on year to P23.652 billion. It also increased 52.2% from August.

The government provides subsidies to GOCCs to help cover operational expenses.

The Philippine Health Insurance Corp. (PhilHealth) was the top recipient, having been granted P11.231 billion or 47.5% of all subsidies during the month. From the first nine months, it took in P44.924 billion worth of subsidies to lead all GOCCs.

This was followed by the National Irrigation Administration, which received P2.663 billion in September.

The Bases Conversion and Development Authority was given P2.411 billion in September. It did not receive any subsidies in the previous month.

Other top recipients were the Philippine Crop Insurance Corp. (P2.135 billion), the National Privacy Commission (P1.319 billion), the Philippine Fisheries Development Authority (P1.086 billion), and the National Food Authority (P1.04 billion).

Other GOCCs that were given at least P50 million were the Civil Aviation Authority of the Philippines (P688 million), the Philippine Children's Medical Center (P151 million), the Philippine Heart Center (P147 million), the National Kidney and Transplant Institute and Philippine National Railways (both P107 million), the Philippine Coconut Authority (P89 million), the Lung Center of the Philippines (P58 million) and the Social Housing Finance Corp. (P51 million).

The Local Water Utilities Administration, the National Electrification Administration, and the National Housing Authority were among the major nonfinancial GOCCs that did not receive subsidies.

Other GOCCs that received no subsidies during the month were the National Tobacco Administration, Small Business Corp., the Subic Bay Metropolitan Authority, and the Sugar Regulatory Administration.

Subsidies amounted to P114.25 billion in the first nine months, down 21.7% from a year earlier.

In 2021, government subsidies to GOCCs stood at P184.77 billion, a 19.3% decline from the previous year. PhilHealth received P80.98 billion, nearly 44% of the total. — **Luisa Maria Jacinta C. Jocson**

Retailers urge DTI to reach price-freeze deal with producers

THE supermarket industry has asked the government to lean on manufacturers not to raise prices in the next three months in order to contain inflation.

Steven T. Cua, Philippine Amalgamated Supermarkets Association president, said the Department of Trade and Industry (DTI) should do so to help consumers deal with soaring prices.

"The DTI should talk quickly to at least one manufacturer in each of the major food categories and have these suppliers agree not to increase prices of selected items for the next three months during this hard time. The DTI could also extend the invitation to all manufacturers (willing to) keep their prices steady for the next three months," Mr. Cua said in a Viber message.

"This should involve all food categories such as milk, coffee, bread, bread spread, bottled water, pasta, tomato sauce, instant noodles, fruit cocktail, canned meat, canned fish, powdered milk, evaporated and condensed liquid milk, biscuits, cooking oil, condiments, and many more. Just for certain sizes for all categories," he added.

On Nov. 4, the Philippine Statistics Authority announced that headline inflation rose 7.7% in October, led by surging food and utilities prices.

Inflation was 6.9% in September and 4% in October 2021.

After reaching such an agreement, Mr. Cua said that the DTI should issue a list of products for which prices will effectively be on hold.

"This connotes volunteerism within the business sector to cooperate with government and society given the hard times," Mr. Cua said.

"Producers earn '*pogi*' points from the public and government, and hopefully, increased sales and market share. Consumers clap their hands for these generous manufacturers and feel a certain relief from overheating prices," he added.

Mr. Cua also proposed offering incentives to participating manufacturers that do not affect the government's tax collection efforts.

"There is no need to get into snack foods and other non-essentials or specialized items. Keep this is as simple and basic as possible," Mr. Cua said.

"Some products have increased in price already three to four times during the last 12 months. A few imported food items have made one-time, big-time price increases of 30% to 40% due to increase in cost of production coupled with the rising cost of living and food being the top expense of households," he added.

The DTI has confirmed that it has pending price increase applications from the manufacturers of products such as canned goods, milk, coffee, and bread.

The latest suggested retail price bulletin of the DTI issued in Aug. 12 reflected price increases ranging from 3.29% to 10% for 67 out of the 218 stock keeping units due to increased raw material and packaging costs.

The products that posted price increases include canned sardines packed in tomato sauce, processed milk, coffee refills, coffee 3-in-1 mixes, noodles, detergent soap, bottled water, candles, and condiments.

Other price increase applications pending with the DTI cover the sandwich bread product known as Tasty and *pandesal*, which were filed by the Philippine Baking Industry Group (PhilBaking). The group is asking to increase the price of *pandesal* to P27.50 from P23.50, and Tasty to P42.50 from P38.50.

BusinessWorld asked the DTI to comment but had yet to respond at the deadline. — **Revin Mikhael D. Ochave**

OPINION

Transfer Pricing is here to stay

SUITS THE C-SUITE

ANA KATRINA C. DE JESUS *and* **NATASHA KIM R. TEC**

Whether before or during the pandemic, related party transactions continued to proliferate both on a domestic and global scale. Business organizations should be mindful of the complexities of the rules surrounding their transactions with related parties. Philippine taxpayers have been anticipating transfer pricing audits by the Bureau of Internal Revenue (BIR) as it intensifies its risk assessment and audit activities.

The regulatory framework for transfer pricing is envisaged to alter the overall tax architecture under which related party businesses operate. A thorough understanding of transfer pricing would allow businesses to effectively plan and future-proof their operations. We take a step back as we look into the evolution of rules in the Philippines and what the future holds for transfer pricing.

TRANSFER PRICING THROUGH THE YEARS

Transfer pricing is rooted in Section 50 of the National Internal Revenue Code which empowers the Commissioner of Internal Revenue to make an allocation of income and expenses between or among controlled group of companies if he determines that a related taxpayer has not reported their true taxable income. Prior to the issuance of local regulations, the BIR sought guidance from the Organization for Economic Cooperation and Development (OECD) transfer pricing guidelines.

In 2013, the BIR issued the Transfer Pricing regulations to provide a set of rules in the determination of the appropriate revenue and taxable income of parties in a controlled transaction. The regulations require the maintenance of contemporaneous transfer pricing documentation, which must exist when the associated enterprises develop or implement any arrangement, or at the latest, when preparing the annual income tax return.

In 2019, the implementation of transfer pricing was given more teeth when the BIR issued the Transfer Pricing Audit regulations. These provided a set of guidelines for revenue officers to propose adjustments by imputing an arm's length price on related party transactions that are not in accordance with the arm's length principle.

The next set of relevant BIR issuances on transfer pricing were released in rapid succession during the height of the pandemic, progressing to the next phase of transfer pricing from compliance to enforcement.

In 2020 and 2021, to generate new sources of funding for the government's pandemic response, the BIR prescribed rules on the disclosure of related party transactions and submission of a transfer pricing form for taxpayers which are covered by the documentation requirement. Through these disclosures, the BIR has clearer visibility on taxpayers with related party transactions, which could be the target for transfer pricing audits.

In 2022, new regulations on Mutual Agreement Procedures (MAP) provide Philippine taxpayers with an alternative mode to resolve disputes from differences in the interpretation or application of tax treaties. One of the typical scenarios requiring MAP assistance is when a taxpayer is subjected to additional tax in one country due to a transfer pricing adjustment from a transaction with its related party in the other country.

THE NECESSARY PREPARATION OF TRANSFER PRICING DOCUMENTATION

With the issuance of amendatory regulations limiting the scope of preparation of transfer pricing documentation to certain types of related party taxpayers and providing for materiality thresholds on the amount of their transactions, other taxpayers with related party transactions are still enjoined to prepare transfer pricing documentation. After all, the burden of proof rests upon the taxpayer on whether its related party transactions adhere to the arm's length principle.

The Transfer Pricing Audit regulations provide that taxpayers must ensure that the related party transaction they enter into is commercially realistic and makes economic sense. As such, taxpayers are expected to maintain contemporaneous documentation. In case of operating losses, the documentation must outline the non-transfer pricing factors that contributed to the losses. In light of the pandemic, affected taxpayers with related party transactions should carry out a Special Factor Analysis in their transfer pricing documentation where all legal and economic justifications are in place to establish a defensible position for business losses or reduced profits during the covered periods.

With the issuance of a Revenue Memorandum Order in 2021 streamlining the procedures and documents for the availment of treaty benefits, taxpayers applying for a tax treaty relief application or request for confirmation in relation to interest income are now required to present proof that the interest rate used in the finance transaction is arm's length. In addition, we have seen the BIR request for the submission of transfer pricing documentation even for tax treaty relief applications or requests for confirmation for other types of cross-border transactions such as business profits and royalties.

There is also an interplay with the Bureau of Customs as it has the authority to question the determination of customs valuation relating to cross border transactions between related parties. A transfer pricing documentation could help support and justify the value of the imported goods purchased from foreign related parties.

Further, the MAP regulations make it clear that the preparation of a transfer pricing documentation is a prerequisite in availing of MAP assistance.

THE FUTURE OF TRANSFER PRICING

Government tax policymakers around the world are working together on proposals for significant changes to long-standing international tax rules in light of the OECD's Base Erosion and Profit Shifting (BEPS) initiative on the globalization and digitalization of the economy. These developments would significantly alter the overall international tax architecture under which multinational businesses with related party transactions operate.

In the Philippines, tax audits with transfer pricing issues have yet to be fully operationalized by the BIR since the inception of transfer pricing audit guidelines. However, taxpayers should not rest on their laurels because the BIR is continuously beefing up its capabilities through continued training of its revenue officers.

With the recent issuance of the MAP regulations, it will only be a matter of time before the Advance Pricing Arrangement (APA) regulations will be released. An APA is an arrangement that determines in advance of controlled transactions, an appropriate set of criteria for the determination of the transfer pricing for transactions over a fixed period of time. The APA has always been a part of the BIR's strategic plan for 2019-2023 because it is expected to address the country's growing transfer pricing problems with the cooperation of taxpayers, particularly in relation to tax base reduction and profit apportionment schemes.

While the OECD BEPS Action Plan 13 has not yet been adopted in the Philippines, multinational companies operating in the Philippines and Philippine conglomerates may still be required to comply with the Master File, Local File and Country-by-Country Reporting requirement.

Now that the BIR has information on related party disclosures that are not otherwise disclosed in traditional tax returns, we may expect increased traction in the conduct of transfer pricing audits. In view of the upcoming e-Invoicing System implementation by the BIR, taxpayers with related party transactions must be aligned with their transfer pricing policies as they will be providing information to the BIR in real time. Taxpayers should be proactive in examining their transfer pricing risks by preparing contemporaneous transfer pricing documentation.

This means a comprehensive approach to systematically address transfer pricing issues and the preparation of robust transfer pricing documentation will be critical to ensure compliance with the arm's length principle.

This article is for general information only and is not a substitute for professional advice where the facts and circumstances warrant. The views and opinions expressed above are those of the authors and do not necessarily represent the views of SGV & Co.

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