PEXELS-MAREK PIWNICKI

EU agrees to move forward with developing-nation green finance

THE European Union has agreed to "operationalize" the Green Climate Fund to help developing countries tap financing for their climate projects, Malacañang said, following a meeting in Brussels between President Ferdinand R. Marcos, Jr. and European Council President Charles Michel.

In a statement on Tuesday, the Office of the Press Secretary said the meeting took place on the sidelines of the Association of Southeast Asian Nations-European Union (ASEAN-EU) Commemorative Summit.

Mr. Michel was quoted in the statement as saying that the EU is ready to work with the Philippines on integrating green technology into government operations.

Developing countries have taken the position that industrialized countries must help finance their climate-mitigation efforts, since the developed world is most responsible for the bulk of the greenhouse gas emissions that are causing climate change.

The Asian Development Bank (ADB) said on Tuesday that the Philippines must budget and mobilize private funding more effectively for climate projects, given the limited resources available to uphold its international commitments.

In 2021, the Philippines committed to reduce 75% of its emissions by 2030. Economic officials have estimated that the Philippines can fund only a small fraction of these initiatives using its own resources.

"The clock is ticking for the Philippines, and the money needed for climate action cannot be mobilized fast enough," the ADB said in a blog post.

At a separate business summit, Mr. Marcos went to bat for keeping trade open in the wake of rising protectionist sentiment inspired by the concurrent food and energy crises.

"The entry into force of the Regional Comprehensive Economic Partnership or RCEP, the ongoing review of existing trade agreements, and ASEAN's initiatives to facilitate the trade of essential goods demonstrates the region's push to maintain an open, free, and fair trade," he said.

"Thus, while the ASEAN-EU FTA (free trade agreement) remains a common long-term objective, economic cooperation initiatives will be prioritized in areas of mutual interest in order to bridge the gap and realize this long-term objective," Mr. Marcos said.

RCEP is the largest FTA with participating countries including the 10 ASEAN members, Australia, China, Japan, South Korea and New Zealand.

Former President Rodrigo R. Duterte approved Philippine participation in RCEP last year but must be ratified by the Senate to take effect.

The Philippines and Myanmar are the last RCEP countries that have yet to finalize their participation in the agreement. — **John Victor D. Ordoñez**

Import permits suspended for *galunggong*, mackerel

THE Department of Agriculture (DA) said it has suspended the issuance of sanitary and phytosanitary import clearances for round scad (*galunggong*), mackerel, and various other species, effective immediately.

According to a department circular dated Dec. 13, the suspension also applies to the issuance of import documents for bonito, moonfish, pompano, and tuna by-products.

The DA said the purpose of the order is to prevent the diversion of such imports to wet markets, where they compete with the catch of domestic fishermen.

Imports of species like salmon and pompano are governed by Fisheries Administrative Order (FAO) 195, which are permitted for import only by hotels, restaurants, and other institutional users. The FAO is also designed to reduce competition from imports for the domestic catch typically sold in wet markets.

FAO 195 exempts from the import restrictions canners and processors holding licenses to operate issued by the Food and Drug Administration who are compliant with food safety standards.

Separately, the DA said imports of pompano and tuna by-products are open only to institutional buyers which keep adequate records.

The DA said that all FAO 195-covered imports need to be registered by the importer with the government's electronic records system within 24 hours.

The Bureau of Fisheries and Aquatic Resources (BFAR) has conducted market inspections following reports that imported pompano and pink salmon are being sold in wet markets.

The BFAR said it is reviewing the FAO No. 195 and expects to issue new regulations by the first quarter. — **Ashley Erika O. Jose**

Electricity spot market prices rise in early December

ELECTRICITY spot market prices increased in early December to P9.12 per kilowatt-hour (kWh) from P8.53 per kWh in November, the Independent Electricity Market Operator of the Philippines (IEMOP) said on Wednesday.

"In the last week of November and early December there were issuances of yellow and red alerts which means there was a thinning margin between supply and demand; with that we saw price spikes," Josell F. Co, IEMOP's manager for corporate communications said in a virtual briefing on Wednesday.

The National Grid Corp. of the Philippines placed the Luzon and Visayas grid on yellow and red alert several times in last week of November and the first week of December, as power reserves thinned after power plants declared forced outages.

Supply levels declined in December, averaging 12,534 megawatts (MW) from 13,691 MW last month. Meanwhile, demand on the Wholesale Electricity Spot Market (WESM) rose to 10,499 MW in December from 10,355 MW in November.

"Overall, the electricity demand for 2022 saw a normalcy in terms of growth as compared to its previous levels in 2020 and 2021 due to the effects of the pandemic," Mr. Co said.

As of Dec. 11, IEMOP said that electricity demand was 10,457 MW, exceeding the 10,088 MW in the corresponding period of 2019.

"We can see that the demand in 2022 and 2019 is nearly the same; we cannot compare 2020 because of the pandemic," he said.

Mr. Co said that IEMOP is also expecting a surge in demand next year.

"If we get very high demand, we have to make more energy, so we are working with the DoE on an energy efficiency campaign... we expect demand to grow especially during the holidays," he said.

Isidro E. Cacho, Jr. head of IEMOP's corporate strategy and communications, said that for the rest of December the WESM price may return to P9 per kWh from the current P8 per kWh.

"Hopefully there will be no more tightening of supply in the market, that's usually the challenge," Mr. Cacho said.

Currently, Manila Electric Co. (Meralco) has been sourcing power from WESM after SMC Global Power Holdings Corp. issued a notice of cessation, terminating its South Premiere Power Corp. contract with Meralco, which covers 670 MW of supply or about 13.4% of Meralco's power requirement in November.

Mr. Cacho said that the impact of the Meralco purchases will be likely felt next month.

"As regards the SMC PSA (power supply agreement) we will wait for the blended rate of Meralco (to know the full impact) of this," he said.

ERC Chairperson and Chief Executive Officer Monalisa C. Dimalanta told reporters at an energy forum on Tuesday that Meralco customers should brace for higher electricity bills.

"For January, (we) Meralco consumers... should brace ourselves for higher rates especially with the completion of several refunds that have tempered the high bills (recently)," she said. — **Ashley Erika O. Jose**

LNG import projects seen facing low utilization if gas prices stay high

THE Philippine strategy of importing gas for its energy needs is at risk from high liquefied natural gas (LNG) prices, which could result in low utilization for the LNG import terminals being constructed, an energy analyst said.

"Investors in planned LNG import infrastructure run the risk of low utilization rates and ultimately possible stranded assets, as high prices are expected to continue for years to come," according to Robert Rozansky, research analyst at Global Energy Monitor.

According to Global Energy Monitor, Asian LNG terminals have the potential to hold 442 million tons per annum (MTPA), with about a third of that total representing builds in progress.

"This $119-billion investment could lock Asian economies into reliance on a volatile, expensive energy source and challenge global efforts to address the climate crisis," the report said.

"Asia has enough LNG import projects in development to boost global LNG import capacity by nearly 50%, and a third of these projects or 145 MTPA are already in construction," the report said.

The Institute for Energy Economics and Financial Analysis had noted in August that the Philippine LNG projects face difficulties because of the uncertainty in the global LNG market.

"Doubling down on gas is a recipe for disaster with no end in sight for sky-high prices and a tight supply. Asian economies would be wise to leapfrog gas directly to sustainable, clean energy, insulated from the volatility of global fossil markets," the report said.

The Department of Energy (DoE) is considering LNG projects as a component of its fuel diversification plan amid the tight power supply projected for next year.

In 2023, two of the six approved LNG projects will start operations — those of Atlantic Gulf & Pacific Co. and First Gen Corp., through its subsidiary FGEN LNG Corp.

The DoE has also approved the projects of Energy World Gas Operations Philippines, Inc.; Vires Energy Corp., Shell Energy Philippines, Inc.; and Luzon LNG Terminal.

The Philippines has to resort to imports of LNG to ensure the continued operation of power plants currently being supplied by the Malampaya gas field.

Malampaya supplies 20% of the national power requirement and 27% of the Luzon grid's needs. It is expected to be commercially depleted in 2027. Its concession agreement expires in 2024. — **Ashley Erika O. Jose**

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OPINION

A prologue to RR 13-2022: DoF opinion on equity-based compensation

TAXWISE OR OTHERWISE

BON YANNICKA M. CHUA

The public is seldom privy to tax developments prior to the issuance of formal rules/regulations by the Bureau of Internal Revenue (BIR). It is worth noting, however, that the BIR's release of clarificatory regulations on Oct. 7 — in the form of Revenue Regulations (RR) No. 13-2022 — was borne out of a taxpayer's request for the opinion of the Department of Finance (DoF) on the tax treatment of equity-based compensation.

On Oct. 6, the Secretary of Finance issued DoF Opinion No. 016-2022 clarifying that equity grants awarded to employees under various stock option plans are considered compensation, and are therefore, subject to withholding tax on compensation (WTC) regardless of the status of the employee-grantee.

At the outset, the DoF acknowledged that the rationale for the opinion-request arose from the varying tax treatments of equity-based compensation. Specifically, Revenue Memorandum Circular (RMC) No. 79-2014 provides that stock option plans and other option plans received by supervisory and managerial employees are treated as fringe benefits subject to fringe benefits tax (FBT); while these same benefits are subject to WTC if received by rank-and-file employees.

In the opinion, the DoF agreed with the taxpayer's position that all equity-based awards, employment status notwithstanding, are considered compensation for services rendered subject to WTC (rather than a fringe benefit). Consequently, the DoF concurred with the legal bases cited by the taxpayer in its request for opinion, *viz*:

- Pursuant to Section 32(A) of the National Internal Revenue Code of 1997, as amended (Tax Code), gross income includes compensation for services in whatever form paid;
- Philippine withholding tax regulations (RR No. 2-1998) provide that compensation income subject to WTC also covers compensation paid in some medium other than money; and
- Four rulings issued by the BIR prior to RMC No. 79-2014 (but after the effectivity of the Tax Code and the withholding tax regulations) consistently held that any income derived by employees from the exercise of their share-based compensation (e.g., stock options and stock awards) are considered additional compensation subject to WTC.

Moreover, the DoF also agreed with the taxpayer that equity-based awards are compensatory in nature and are not "perks" within the conventional description of items subject to FBT under Section 33 of the Tax Code. The fact that these awards are, by their nature, subject to a vesting period — within which the employees are required to perform their services — further supports the position that equity-based income is indeed granted in exchange for services rendered by the employee.

Additionally, the taxpayer also stated in its opinion-request that the FBT regulations in Australia, on which our local FBT rules are based, treat equity income as income subject to compensation tax.

Given the foregoing, the DoF stated that its opinion would effectively supersede parts of RMC No. 79-2014 which were inconsistent with its findings. Specifically, share-based compensation received by managerial and supervisory employees is no longer considered fringe benefits subject to FBT. In closing, the Finance Secretary advised that the DoF would issue, through the BIR, a corresponding RR on the matter — i.e., RR No. 13-2022.

Although it took the tax authorities eight years, the DoF's opinion and RR No. 13-2022 are welcome developments as the rules on equity awards are now aligned with the provisions of the Tax Code and prevailing regulations. Likewise, the DoF opinion further reminds taxpayers that, aside from requesting a review of an adverse ruling from the BIR, they may also opt to seek tax clarifications from the DoF by initiating a request for opinion.

However, this author wishes to highlight that DoF opinions alone, when taken exclusively, are neither laws nor jurisprudence. They are administrative rulings which are only interpretative in nature. Thus, these would be more effectively implemented if the BIR issues the corresponding regulations or circulars to enforce the Finance department's rulings or opinions, such as it has done in this case.

Nonetheless, as the BIR's mission is "... to collect taxes through just enforcement of tax laws for nation-building and the upliftment of the lives of Filipinos," tax authorities and taxpayers must continue cooperating to clarify any ambiguous tax positions or challenge any questionable tax rules. This ensures the predictable administration of taxes and keeps up with the rapidly changing times.

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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