

## Meat processors seek withdrawal of PPA container registration rules

THE Philippine Association of Meat Processors, Inc. (PAMPI) has asked the Philippine Ports Authority (PPA) to revoke PPA Administrative Order No. 04-2021, which requires importers to pay for the registration and monitoring of containers.

In a letter to PPA dated Jan. 3, PAMPI said the administrative order imposed an additional “unjustifiable burden” on the industry, which is already having to deal with the high cost of raw materials and supply chain disruptions.

“We do not see how such a policy can contribute to recovery and growth of our economy,” PAMPI said

in its letter signed by President Felix O. Tiukinhoy, Jr. and Vice-President Jerome D. Ong.

PAMPI said the policy will force the industry to pass on the cost of the charges to consumers.

The group also alleged that the PPA order amounted to “grave abuse of authority,” as the containers are not owned by importers but by shipping lines.

“The use of containers is paid to shipping lines by importers as part of freight costs. Therefore, requiring importers to pay the PPA for monitoring contain-

ers which do not belong to them, is unwarranted and abusive,” PAMPI said.

PAMPI also said that the PPA order duplicates a current cargo-tracking system put in place by the Bureau of Customs (BoC), for which importers are required to pay per container load.

The BoC system is known as electronic tracking of containerized cargo systems.

*BusinessWorld* solicited comment from the Department of Transportation, the PPA's parent agency, but it had not replied at the deadline. — **Ashley Erika O. Jose**

# ECCP expects PHL to deal with corruption ‘pragmatically’

By **Alyssa Nicole O. Tan**  
Reporter

THE European Chamber of Commerce of the Philippines (ECCP) is confident that officials of the new administration will deal with corruption in a “pragmatic” manner, and called for improvement in the area of respect for contracts during the Marcos term of office, its president said.

In a video call with *BusinessWorld*, ECCP President Lars Wittig said that “corruption remains a very big challenge” in the Philippines, but added that he had a positive view of the team put in place by the new government.

“They are speaking the business people’s language, they are very pragmatic, and I think they will ensure that we will see significant improvement,” he said.

Mr. Wittig also said that the Philippines needs to become more dependable in terms of the validity of contracts.

“There are rules to the game... you don’t like to see contracts or rules change, so we have to have more reliability here,” he said, calling this an “ongoing concern” for the Philippines.

“I also think that in that regard, the answer now (is) with the new government,” he added.

He said the previous government “had very strong and good efforts to eliminate (corruption),” but “was very challenged in succeeding.”

The Philippines slumped to a historic low on the 2021 Corruption Perceptions Index released in January 2022. It dropped two spots to 117<sup>th</sup> out of 180 countries and territories.

Transparency International said the Philippines scored 33 out of 100 on a scale measuring perceived levels of public sector corruption.

In 2021, the Philippines scored 34. The scale defines a 100 score as “very clean” and zero as “highly corrupt.”

“Since the election of Rodrigo R. Duterte (in 2016), the Philippines has also seen a sharp decline in freedom of association and freedom of expression, making it harder to speak up about corruption,” Transparency International said.

Danish Ambassador Franz-Michael S. Mellbin also said at a news conference on Wednesday that to contain corruption, the administration will have to demonstrate political will and move forward with digitalization.

“Political will is more important than legislation,” Mr. Mellbin said. “It can take time in a country like the Philippines. You will have petty corruption and you will also have big corruption, lots of money,

powerful people, and those need to be tackled in different ways.”

“With petty corruption, one thing that the country could do is digitalization, and this is one of the things that I will be working on,” he added, noting that Denmark is a world leader in government digitalization.

Denmark is interested in working with the Philippines on bringing its processes online, saying the transition will help the country reduce costs and cut down on opportunities for corruption.

“It’s a win-win situation except for the person pocketing the money,” he said.

Mr. Mellbin added that “corruption is friction, it (makes business) less predictable, and it’s embedded in the legislature.”

“Denmark has the least corruption in the world, so corruption is actually extra worrying for Danish investors,” he added, referring to the Transparency International Corruption Perception Index rankings.

The ambassador said red tape is also an issue.

“Red tape has to come down. It is a business killer, and you’re great at red-taping but it does not help businesses a lot,” he said.

Cumbersome government processes are one of the biggest worries of Danish investors and business leaders, dampening their interest in operating in the Philippines.

## Data disclosed in loan transactions subject to new privacy protections

THE National Privacy Commission (NPC) said it has added new privacy rules governing data disclosed during the loan application process.

In a statement on Wednesday, the NPC said Circular No. 2022-02, issued on Dec. 1, amends Circular No. 2020-01 issued in September 2020. The two circulars prescribe guidelines on the processing of personal data shared by clients in loan applications, loan releases, and loan collection, including character references and the identity of guarantors.

Privacy Commissioner John Henry D. Naga said that the amended circular seeks to address data privacy concerns following a surge in online lending.

“NPC Circular No. 2022-02 provides amendments that will serve as an added protection to both borrowers and lending companies. The NPC aims for smooth transactions

between the two parties, where borrowers are afforded their data privacy rights and lending companies are given the opportunity to ethically conduct their business and establish trust among their customers,” Mr. Naga said.

The amended circular requires a lender, financing company, and other persons acting as such to provide notice before obtaining consent to process the data gathered in the lending process.

The just-in-time notice informs data subjects on how a specific piece of information they are asked to provide will be processed.

“When providing details of processing to data subjects, the lending company, financing company, or other persons acting as such must consider the accessibility of the information and convenience of the borrowers,” the NPC said.

The amended circular also provides that a lending firm, financing firm, or other related persons are prohibited from conducting unnecessary processing involving sensitive and personal information.

The NPC said that the amended circular allows the processing of a borrower’s contact information in order to verify the person’s identity and to check the truthfulness of the information provided.

“However, the processing must not be unbridled or unconstrained, excessive, and disproportional to its purpose. This includes processing that leads to harassment; processing for collection of debt outside of the guarantors provided by the borrower; and processing that results in unfair collection practices,” the NPC said. — **Revin Mikhael D. Ochave**

# Ecozones touted as means to mitigate global recession impact

THE impact on the Philippines of the impending global economic slowdown can be mitigated by developing more economic zones (ecozones), the Philippine Economic Zone Authority (PEZA) said.

PEZA Officer-in-Charge (OIC) Tereso O. Panga said more ecozones are in store with the release recently of the Philippine Development Plan (PDP) 2023-2028 by the National Economic and Development Authority.

“Ecozones can be shields to soften the landing (amid) all these global disruptions... ecozones can (also) be drivers to accelerate economic recovery and growth,” Mr. Panga said in a statement on Wednesday.

“With the inclusion of the ecozone development program, we are positive that more ecozones will be approved and created especially in the countryside,” he added.

The PDP formally directs PEZA to execute the ecozone transformation roadmap. It also provides for the amendment of Republic Act No. 7916 or the PEZA Law, to facilitate the digitalization of the registration process for ecozone locators and the promotion of co-located industry and services entities in knowledge, innovation, science, and technology parks.

“The creation of ecozones will be within the existing investment promotion agencies to maximize investments and promote industrial dispersion especially outside metropolitan areas,” according to the PDP.

“Further, the ecozones will be integrated into the local economy by relaxing the requirements, facilitating the free flow of parts, components, and other inputs, and increasing open trade between zone locators and firms outside the zones,” according to the plan.

PEZA said it approved 29 ecozone development projects worth P96.21 billion in 2022, of which 11 were registered in the first six months of the Marcos administration.

By far the largest approved investment is a mixed-use special ecozone for manufacturing and tourism in Pangasinan worth P81.648 billion.

“Of the total approved ecozone projects, 13 were information technology (IT) parks and centers, 12 were manufacturing ecozones, two tourism, one agro-industrial and one mixed-use for manufacturing and tourism,” PEZA said.

“To date, there are a total of 421 PEZA ecozones nationwide hosting 4,346 locator companies and creating 1.8 million direct jobs,” it added.

PEZA is hoping to grow ecozone investment by 10% in 2023.

A total of P140.7 billion worth of investment was generated in 2022, up 103.03%.

“With our enhanced investment laws and strengthened ecozone development programs, we remain bullish that we will be able to jumpstart the economy and keep up with the strong competition worldwide,” Mr. Panga said.

PEZA added in a separate statement that Mr. Panga is ready to step down as OIC once President Ferdinand R. Marcos, Jr. appoints a new PEZA Director-General.

PEZA leadership was thrown into turmoil last year when former Director-General Charito B. Plaza contested Mr. Panga’s designation as OIC.

Four PEZA employees filed a complaint with the Office of the Ombudsman against Mr. Panga for his alleged “usurpation of authority and violation of Republic Act No. 6713 or the Code of Conduct and Ethical Standards for Public Officials and Employees.”

In a statement responding to the complaint, PEZA said: “Being the most senior career executive and next in rank officer of the agency, the bases of the designation/assumption of the OIC are Office of the President’s Memorandum Circular (MC) Nos. 1, 3 and 9... This is further bolstered by MC No. 12 recently issued by Executive Secretary Lucas P. Bersamin for the OIC’s continuance in office until the President appoints a permanent one.”

“The PEZA Management Committee, its employees and ecozone stakeholders fully support the OIC to lead PEZA. The OIC, as he has said time and again, is ready to step down as OIC when President Marcos Jr. appoints a Director-General of PEZA,” it added.

Amando Virgil D. Ligutan, legal counsel for the complainants, said in a statement that the PEZA employees decided to file their case with the Ombudsman to consolidate both criminal and administrative charges.

Mr. Ligutan alleged that Mr. Panga terminated contractual employees while other employees were demoted and transferred to “far-away” ecozones after being identified as “supporters of Ms. Plaza.”

“The oppressed PEZA employees initially lodged their complaint with the Civil Service Commission, but they opted to withdraw it and filed instead its case with the Ombudsman,” Mr. Ligutan said. — **Revin Mikhael D. Ochave**

### OPINION

## Withholding agents as refund claim agents

Without taxes, government cannot function properly.

The simple truth of the “lifeblood” doctrine forms the basis for the government taxing individuals and corporations alike. It is also for this reason that the government keeps a tight rein on tax refunds.

Tax refunds are construed *strictissimi juris* against the taxpayer. This means that the burden of proving entitlement to a refund rests with the taxpayer-claimant. That’s because in the event that a refund claim is granted, the government must take out funds from its coffers which it could have otherwise used to finance its spending.

To prove entitlement to a refund, the claimant must show that it met the conditions laid down under the rules. Of the many conditions in a refund claim, one of the main requisites is that the party filing the claim must be a party in interest. In most cases, it is the income payor that files a refund claim, considering that it is the party that overpaid. It is the party that stands to benefit or lose depending on the outcome of the refund

claim. Hence, it has the personality to file the claim for refund.

Notwithstanding the foregoing, several court decisions have been rendered confirming that aside from the income payor, the withholding agent also has the personality to file a claim for refund. Recently, the Court of Tax Appeals (CTA), in *En Banc* Case No. 2359, touched on this issue when the court upheld the decision of the CTA First Division that a withholding agent can file a refund claim.

In that ruling, the Philippine taxpayer/withholding agent contracted the repair services of a non-resident foreign corporation (NRFC). Prior to paying the NRFC, it withheld taxes based on the applicable tax rate per the Tax Code and remitted the same to the BIR. Subsequently, within the period prescribed by law, the withholding agent filed on behalf of the NRFC a claim for refund of erroneously paid final withholding taxes. The refund claim is anchored on the Philippines-Japan Tax Treaty which provides that the business profits/service income derived by a Japanese tax resident that

does not conduct business in the Philippines as a permanent establishment are exempt from income tax, and consequently from withholding tax.

In arguing against the legal personality of the withholding agent to file a refund, the Commissioner of Internal Revenue (CIR) contended that the withholding agent is not the statutory taxpayer who is the proper person to file a claim for refund or tax credit; therefore, it has no legal standing to pursue the refund claim since it is not the real party in interest. The CIR reiterated that it is the NRFC, the statutory taxpayer, that is the proper party to file the claim for refund.

In its decision, the CTA, sitting *En Banc*, affirmed the ruling of the CTA First Division and denied the CIR’s Petition for Review for lack of merit. In ruling so, the Tax Court stressed that pursuant to Section 204(C) and 229 of the 1997 Tax Code, the person entitled to claim a tax refund is the taxpayer. Moreover, the Tax Court cited the case of *CIR vs. Smart Communication, Inc.*, where the Supreme Court ruled that the withholding agent has a legal right to file a claim for refund for two reasons:

1. He is considered a “taxpayer” under the Tax Code as he is personally liable for the withholding tax as well as for deficiency assessments, surcharges, and penalties, should the amount of the tax withheld be finally found to be less than the amount that should have been withheld under law; and

2. As an agent of the taxpayer, his authority to file the necessary income tax return and to remit the tax withheld to the government impliedly includes the authority to file a claim for refund and to bring an action for recovery of such claim.

The option to have the withholding agent file the refund claim can prove practical and advantageous on the part of the NRFC.

Having the withholding agent file the refund claim may mean that the NRFC may exert less time, energy and resources to support the refund claim. In pursuing the administrative claim for refund, logistics-wise, it may also be easier for the withholding agent to coordinate with the local revenue office. Furthermore, should the need to file a judicial refund claim arise, in comparison to the NRFC, the withholding agent may be more readily available for court hearings.

Of course, however reasonable, these are mere assumptions, and whether having the withholding agent file on behalf of the NRFC would prove more beneficial would depend on the circumstances of the parties involved. Whatever the case may be, it bears stressing that once a refund claim filed by a withholding agent is granted, the ultimate party with the right over the refunded amount is the party that actually bore the cost of the tax, which is more often, the income payor. Hence, in such case, the withholding agent-customer has the obligation to remit the amount of taxes recovered to the supplier.

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