Government restructuring bill clears House on third reading

THE House of Representatives approved on third and final reading a bill seeking to "rightsize" the bureaucracy, in light of devolution and the contracting out of some government services to the private sector.

During Tuesday's plenary session, 292 legislators voted in favor of the measure. The three-person Makabayan Bloc — Deputy Minority Leader and Party-list Rep. France L. Castro, Assistant Minority Leader and Party-list Rep. Arlene D. Brosas, and Party-list Rep. Raoul Danniel A. Manuel — voted no. Zero members abstained.

House Bill No. 7240 or the National Government Rightsizing Act, grants the President the authority to restructure agencies controlled by the Executive branch.

The bill empowers the President to streamline or eliminate functions, programs, and projects "that could be better carried out or undertaken by the private sector or which have already been devoted to LGUs (local government units)."

The bill also detailed the retirement benefits and separation incentives for government employees that will be affected by the restructuring.

A government employee with between five and 11 years will receive the equivalent of half salary based on basic pay for every year of service, with entitlements escalating to the highest tier of one and a quarter months' salary for every year of service for those at work for 31 years and above.

If signed into law, the restructuring will be carried out within three years.

The restructuring will affect departments, bureaus, offices, commissions, boards, councils, government-owned and -controlled corporations (GOCCs) not covered by GOCC Governance Act of 2011, and their attached agencies. LGUs may also restructure their operations depending on their financial capacity.

Civil servants not covered by the bill are teachers, those in medical and health-related positions, and military and uniformed personnel.

Jose Sonny G. Matula, president of the Federation of Free Workers, said via Viber, "It is crucial to ensure that equity and the welfare of public sector employees are not neglected. Their voices must have a forum to be heard but there is none in the bill."

A Committee on Rightsizing the Executive Branch will be created to review and study roles, functions, and manpower levels. The Executive Secretary will chair the committee, while the Budget Secretary will serve as vice-chair.

Mr. Matula called for the inclusion of at least three representatives from public sector unions, with at least one of them a woman.

Budget Secretary Amenah F. Pangandaman noted that trimming the government workforce by 5% would save P14.8 billion.

In a statement, the Budget department said that the resulting savings "may be used to fund priority projects such as much-needed infrastructure, social services, programs in the health sector, agriculture, among others."

Ms. Brosas, who turned in one of the no votes, told the plenary that she prefers that the savings generated be used to reduce government debt, and warned against the diversion of savings due to corruption.

The bill is one of the House's priority measures for the year. President Ferdinand R. Marcos, Jr. has expressed support for the program, even after campaigning on a promise to fill 180,000 vacancies in government and elevate workers engaged on a job order basis to regular status at both national and local government levels. — **Beatriz Marie D. Cruz**

Senate bill calls for wage hike of P150

SENATE President Juan Miguel F. Zubiri filed a bill on Tuesday seeking an increase the minimum wage for private sector workers of P150.

"If workers are putting in hours and hours of labor, day after day, and yet are still unable to afford their rent, bills, and basic necessities, then there is a problem," Mr. Zubiri said in a statement.

"While our GDP (gross domestic product) is going up, we have to make sure that our economic growth actually cascades to our people," he added. "Otherwise, we're just widening the gap between rich and poor."

Legislated wage hikes run counter to the advice given by government economic managers, who warned about the negative impact on the Philippines' competitiveness.

If passed, Senate Bill 2002 or the Across-the-Board Wage Increase Act of 2023 will apply to the entire private sector, including agricultural workers, regardless of employer size and headcount.

The National Capital Region currently has the highest daily minimum wage of P570, with wages in the Bangsamoro Autonomous Region the lowest at P316.

The objective, Mr. Zubiri said, is to "actually achieve a level of comfort that allows (workers) to pursue their personal goals and interests, beyond just their work."

According to the think tank Ibon Foundation, the gap between workers' wages and the estimated family living wage continues to widen. As of January, the living wage for a family in the capital region was estimated at P1,161, more than double the region's minimum wage.

Headline inflation slowed to 8.6% in February from 8.7% in January. This marked the 11th consecutive month inflation was above the central bank's 2-4% target.

"Despite the soaring inflation, however, the Regional Wages and Productivity Boards are constrained by law as they can only come out with a new wage order once every year, unless they declare supervening conditions," Mr. Zubiri said in the bill's explanatory note.

"Given the urgency of the situation, a legislated wage increase is called for to ease the effect of wage erosion brought about by inflation," he added. — **Alyssa Nicole O. Tan**

ASF pig cull finds BAI, Cebu province at odds

THE Bureau of Animal Industry (BAI) said on Tuesday that the pigs infected with African Swine Flu (ASF) in Cebu will need to be culled according to international norms, setting up a potential clash with the province's governor, who ordered a halt to the cull on Monday.

BAI Director Paul C. Limson said the cull procedure recommended by the World Organization for Animal Health will require the destruction of hogs within 500-meters of the infection site.

"Our protocols are always being reviewed by our stakeholders and our experts. As far as I know, the movement is being reviewed right now. If it is needed to adjust, we will," Mr. Limson said in a media briefing.

Last week, the BAI confirmed that the blood samples taken from pigs in a slaughterhouse in Carcar City tested positive for ASF.

In a news conference on Monday, Cebu Governor Gwendolyn F. Garcia ordered the suspension of the cull in Carcar, to the southwest of Cebu City.

She said that ASF-infected pigs from the three barangays in Carcar City have already been culled, and called for no pigs to be culled without confirmation using reverse transcription polymerase chain reaction (RT-PCR) tests.

According to Mr. Limson, the BAI regional office will be agreeing a course of action in consultation with the province.

"We will try to understand what Governor Garcia wants to do (in her) area of jurisdiction and we will respond to her," Mr. Limson said.

He said local government units have the power under the Local Government Code to issue ordinances to protect their industries.

Mr. Limson warned that ASF can spread "through meat products, through the movement of live pigs."

Agriculture Assistant and Chief of Staff Secretary Rex C. Estoperez told *BusinessWorld* that measures have to be "harmonized" to minimize finger-pointing and protect the hog industry.

"The Department of Agriculture's Senior (Undersecretary Domingo F.) Panganiban has called for harmonized action "to stabilize prices and the supply of pork," Mr. Estoperez said. — **Sheldeen Joy Talavera**

Electricity spot market prices decline in March

THE Independent Electricity Market Operator of the Philippines (IEMOP) said the average electricity spot market price in early March declined by P1.69 from a month earlier to P5.78 per kilowatt-hour (kWh).

IEMOP said that in March, average demand on the Wholesale Electricity Spot Market (WESM) declined 1% month on month to 9,826 megawatts (MW), while average supply increased 3.1% to 14,258 MW.

During the two-week Malampaya maintenance shutdown, Josell F. Co, IEMOP's manager for corporate communications, said that demand surged to 9,992 MW against supply of 13,719 MW.

The average electricity spot market price was P8.18 per kWh during the period.

The Malampaya gas-to-power project was shut down between Feb. 4 and 18. During the shutdown, power plants supplied by Malampaya ran on liquid fuel.

IEMOP is a non-stock, nonprofit corporation and the operator of WESM.

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

Separately, Mr. Co said WESM Mindanao had an average supply margin of 1,429 MW with a spot settlement price of P5.23 per kWh in the first billing month of its operations in February.

"This result may be attributed to a significant supply margin reflecting a surplus in available capacity compared to an average demand of only 1,745 MW," he said.

The majority of Mindanao's requirements were served by coal-fired plants, which provided 62.54% of the total, followed by hydro plants (30.39%), and geothermal plants (4.44%), with 13.90% of total power consumed bought on WESM.

Isidro E. Cacho, Jr., IEMOP's head of Corporate Strategy and Communications, said that according to the Department of Energy's 2023 to 2024 roster of committed projects, IEMOP is expecting an additional 29 MW of solar capacity to come online in Mindanao. — **Ashley Erika O. Jose**

NCR retail price growth rises to 6.3% in January

RETAIL price growth in Metro Manila was 6.3% in January, the highest reading in 14 years, the Philippine Statistics Authority said on Tuesday.

Price growth was measured by the National Capital Region general retail price index (GRPI), which accelerated from 6% recorded in December and 1.9% in January 2022.

The January indicator was the highest since the 6.8% seen in November 2008.

Security Bank Corp. Chief Economist Robert Dan J. Roces attributed the further acceleration of retail price growth to ongoing supply chain disruptions in food and growing demand, generating inflationary pressures.

"This also validates the high January CPI as food was a major contributor," Mr. Roces said in a text message.

Headline inflation in January surged to 8.7%, the highest reading in over 14 years.

Food inflation in January was 11.2%, exceeding the 10.6% growth in December, led by vegetable prices.

Other categories posting higher price growth were manufactured goods classified chiefly by materials (3.7% in January from 3.4% in December); machinery and transport equipment (1.2% from 1.1%); miscellaneous manufactured articles (1.7% from 1.5%); chemicals, including animal and vegetable oils and fats (3.6% from 3.5%); and crude materials, inedible except fuels (5.9% from 4.7%). — **Mariedel Irish U. Catilogo**

Batangas sugar mill closure curbs province's cane processing capacity

THE closure of Central Azucarera Don Pedro, Inc. (CADPI) in Nasugbu, Batangas, has left the province's planters with limited facilities to mill about 15,000 tons of sugarcane, a farmers' cooperative said.

In a radio interview, Pablito Paciona, a director with the Saprocom Multi-Purpose Cooperative, said the decision to close the mill permanently will leave them with nowhere to mill their harvest in the last two months of milling season.

"In the remaining two months, we can mill about 50,000 tons, but 15,000 tons will be left in the fields," he said.

According to Mr. Paciona, the cooperative has about 600 members who can turn to other mills, which cannot take up their entire harvest.

The sugar central is a unit of Roxas Holdings, Inc. In late 2022, it announced plans to shut down permanently, citing the challenging operating environment in Batangas, including old equipment and the lack of cane being brought in for milling.

Mills in Balayan, Batangas, run by Universal Robina Corp. and Progreen Agricorp, Inc., can only absorb some of the harvest, Mr. Paciona said, noting their daily capacity of 4,000 tons and 2,000 tons, respectively. CADPI used to mill 10,000-13,000 tons a day.

Mr. Paciona said the cooperative borrowed P40 million from Land Bank of the Philippines which it was hoping to pay down using income from milled cane. — **Sheldeen Joy Talavera**

OPINION

Are all incidental transactions subject to VAT?

LET'S TALK TAX
MARK EBENEZER A. BERNARDO

The deadline for filing the Annual Income Tax Return (AITR) in taxable year 2022 is fast approaching, and many taxpayers are striving to beat the April deadline. Once the ITR has been filed, taxpayers should start preparing for possible audit investigations that may be ordered by the Bureau of Internal Revenue (BIR). This is why it is important to determine the taxability of our transactions.

Deficiency Value-Added Tax (VAT) is going to be an area of focus by BIR auditors because this type of tax relates to the operations of the taxpayer's business, specifically revenue. One of the common VAT deficiencies lies in transactions considered incidental transactions subject to VAT. In certain cases, the BIR assesses the taxpayer for VAT deficiency for any other transactions, either declared, isolated, or incidental, that are found to be actual or appearing to be made in connection with the course of trade or business of the taxpayer.

Hence, one of the questions of taxpayers is whether or not all incidental income is subject to VAT. Well, the answer to this is, it depends on whether such income is related to or connected with the conduct of the main business activity which is subject to VAT.

VAT is imposed upon any person who, in the course of trade or business, sells, barters, exchanges, leases goods or property, and renders services, and any person who imports goods as provided under Section 105 of the National Internal Revenue Code, as amended. Under the law, the phrase "in the course of trade or business" means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto. Thus, the law also includes incidental transactions that are made during the course of a regular transaction or the main activity. Furthermore, the term "incidental" means depending upon or appertaining to something else primary; something necessary appertaining to, or depending upon another, which is termed the principal; or something incidental to the main purpose.

In the recent Supreme Court ruling in the case of *Lapanday Corp. v. Commissioner of Internal Revenue (G.R. No. 186155, Jan. 17, 2023)*, the Court ruled that it must be clearly established that such alleged incidental income in question must be related or connected with the conduct of the main business activity which is subject to VAT. In the decision, the Court overturned the decision of the Court of Tax Appeals (CTA) sitting En Banc, because the taxpayer merely earned interest income through a loan accommodation it facilitated for its affiliates, which could not be considered as derived from a commercial or economic undertaking. Hence, the SC ruled that the interest income on loans to affiliates is not subject to VAT.

Do note that it does not follow that an isolated transaction cannot be an incidental transaction for purposes of the VAT liability. However, it must be clearly established that the transaction in question must be related or connected with the conduct of the main business activity which is subject to VAT. In fact, there are other decisions of the SC that ruled that the taxpayer's incidental or isolated transactions may be either subject or not subject to VAT. In *Mindanao II Geothermal vs. CIR (2006)*, the Supreme Court ruled that the sale of a Nissan Patrol vehicle by a company which was not primarily engaged in the business of selling motor vehicles may be subjected to VAT because the vehicles was part of the company's Property, Plant and Equipment. Hence, the Court ruled that it is an incidental transaction made in the course of business, which is subject to VAT.

On the other hand, in *CIR vs. Magsaysay Lines, Inc. (2006)*, the sale by the National Development Co. of its vessels to Magsaysay Lines, Inc. was an isolated transaction, but the Court ruled that it was not subject to VAT because it was made pursuant to the government's privatization program, and that the transaction could no longer be repeated or carried on with regularity. In the case of *Power Sector Asset and Liabilities Management Corp. (PSALM) v. CIR (2017)*, the Court considered the sale of power plants by PSALM as transactions not made in the course of trade or business because they show an exercise of a governmental function mandated by law for the primary purpose of privatizing NPC assets in accordance with the guidelines of RA 9163 or the Electric Power Industry Reform Act (EPIRA).

Accordingly, taxpayers should provide documentary information and determine the nature of the transaction whether it be regular, incidental, or isolated. Taxpayers should also evaluate the tax implications of their transactions, and if they should be categorized as isolated or incidental in the conduct of their regular business. As pointed out by the SC in the *Lapanday* case, such transactions are not transactions incidental to the taxpayer's main business because not only are they merely isolated and not for commercial or economic purpose, but they also apparently lack any showing of a connection between the particular transaction and the primary purpose of the company.

Let's Talk Tax is a weekly newspaper column of P&A Grant Thornton that aims to keep the public informed of various developments in taxation. This article is not intended to be a substitute for competent professional advice.

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