# MWSS sees sufficient supply of water despite low Angat levels

DECLINING water levels at Angat Dam remain sufficient to supply Metro Manila and nearby provinces as the dry season kicks in, the Metropolitan Waterworks and Sewerage System (MWSS) said.

"We are confident that the water in Angat and all other sources like Laguna Lake and Wawa will be sufficient," Leonor C. Cleofas, administrator of MWSS, said in a Viber message to *BusinessWorld* on Monday.

The Philippine Atmospheric, Geophysical and Astronomical Services Administration (PAGASA) reported that the water level in Angat Dam declined to 199.37 meters on April 10 from 199.76 meters on April 9.

The dam has a minimum operating level of 180 meters operating level and a normal high-water level of 212 meters. The latter is considered the ideal level with adequate safety margins during the dry months.

"Angat level is way above the 180-meter level (which is the trigger for) priority allocation to domestic water" instead of irrigation, Ms. Cleofas said.

Angat Dam is the main source of water for Metro Manila, accounting for about 90% of the capital's potable water.

PAGASA also said that El Niño is set to develop in the second half of the year and run until 2024.

"The PAGASA forecast is that if ever there is an El Niño the impact is early next year. Anyway, we have to use our water wisely," Ms. Cleofas said.

Asked to comment, representatives of Maynilad Water Services, Inc. and Manila Water Co., Inc. said their water augmentation measures are in place.

"It is expected for the water level in Angat Dam to go down as the summer season progresses. The Angat Dam technical working group is monitoring the water elevation trend regularly to ensure that it stays at healthy levels," Jennifer C. Rufo, head of Maynilad's corporate communications, said in a Viber message on Monday.

Ms. Rufo said water service interruptions in areas served by Maynilad will continue.

"As long as our raw water allocation is unchanged, then the current service levels in our concession area will stay the same," she said.

Earlier, Maynilad said customers will continue to experience service interruptions as supply remains inadequate.

Maynilad supplies water to the west zone of Metro Manila while Manila Water provides water for the east zone.

Manila Water has said it will maximize the production of its treatment plants and water sources to ensure uninterrupted water services as demand increases.

"Same contingency measures. We continue to supply 24/7 to our customers except during times of preventive and regular maintenance and emergency repair activities," Nestor Jeric T. Sevilla, Jr., Manila Water's corporate strategic affairs group head said in a Viber message. — **Ashley Erika O. Jose**

PHILIPPINE STAR/ MIGUEL DE GUZMAN

# LRTA awaiting gov't funding commitment for LRT-2 West extension

THE Light Rail Transit Authority (LRTA) said it has requested that the government expedite the issuance of a budget document known as the multi-year obligational authority (MYOA) to signify a commitment to fund the LRT-2 West Extension project.

"'*Yan ang nire*-request *namin*, the soonest *sana. Kasi 'yan ang hinihintay namin para maka*-start *kami ng* bidding, with that document *pwede ka na mag*-start *ng* bidding (It is what we are requesting, the soonest if possible. That's the document we are waiting for to start the bidding for the project)," LRTA Administrator Hernando T. Cabrera told reporters.

Mr. Cabrera said that the MYOA should have been issued last year.

The MYOA is issued by the Department of Budget and Management to government agencies undertaking multi-year projects.

"*Nakaabang na ang* consulting services *natin, kumpleto na ang lahat ng* bidding documents, *kumpleto na ang lahat ng mga* design. *Naka*-suspend *lang 'yung* consultant *kasi wala silang ginagawa e,* so they have to scale down, *naka*-skeleton force *lang sila* (Our consulting services providers are ready, the bidding documents are complete, the design is complete. The consultant is currently not doing anything and has had to scale down to a skeleton force)," Mr. Cabrera said.

He added that the delay could be the domestic sourcing of the funds.

"Compared to other projects that are funded by JICA (Japan International Cooperation Agency) or ADB (Asian Development Bank), this one is a locally-funded project," he said.

Mr. Cabrera said all the issues concerning alignment and right of way (RoW) for the West Extension project have been resolved.

Initially, Mr. Cabrera said that there were issues involving the Philippine Ports Authority (PPA), informal settlers and RoW sharing with other government projects.

"The last remaining hurdle *namin diyan actually is 'yung doon sa* area *na pag-aari ng* PPA. *Meron kasing tatamaan na* area *doon na pagmamay-ari ng* PPA, *'yun na lang ang* last hurdle *namin. Pero* continuous *'yung aming* coordination meeting with them *para matapos na 'tong* issue (Our last remaining hurdle was in the area owned by the PPA because the project will cross an area controlled by PPA. But we are holding continuous coordination meetings with them to resolve the issue)," he said.

Meanwhile, Mr. Cabrera said that due to the changes made to Department of Public Works and Highways (DPWH) projects in the same area, there is a chance that the existing RoW will be able to accommodate the West Extension project.

"*Sa nabasa kong* report is that *itong isang* DPWH *na* project *ito iuusog nila ng konti* so it will accommodate us now to go back *doon sa* road RoW *so wala na kaming problema sa* informal settlers (A report I've read showed that one DPWH project will be slightly moved, so the RoW can now accommodate us. We don't have any problem with informal settlers anymore)," he said.

"But basically, the main problem is the funding. *Tuloy-tuloy ang* request *namin* to speed up the budget (We are continuously requesting to speed up the allocation of the budget)," he added.

The West Extension project will connect the current line that ends in Recto to Port Area, Manila. The 3-kilometer project will have three stations: Tutuban, Divisoria and Pier 4.

A letter of transmittal indicates that the total cost of the West Extension is P10.12 billion. — **Justine D. Tabile**

# Border inspection facilities may be most important step in curbing ASF

THE farming industry said the government needs to expedite the construction of first border inspection facilities to finally contain the African Swine Fever (ASF) outbreak.

In a statement, Samahang Industriya ng Agrikultura Executive Director Jayson H. Cainglet said the Philippines remains the only country without first border inspection facilities.

"It will not matter if you impose movement protocols and bio-security measures on farms and the transport of live hogs if we continue to have unlimited entry of untested imported pork at the port of first entry," he said.

Mr. Cainglet noted that the funds for the construction were earmarked in 2019, adding, "there is obviously a resistance within the Department of Agriculture (DA) to construct such facilities."

Former President Rodrigo R. Duterte approved the establishment of designated cold examination areas in major ports like Manila, Batangas, Subic, Cebu, and Davao to contain the spread of ASF.

"Producers are bearing the cost of increased biosecurity at the farm level, continued regular testing of pigs for ASF and related diseases, stricter ordinances on pig movement; yet there is no real quarantine inspection of imported pork," he said.

Mr. Cainglet added that the lack of indemnification is discouraging hog raisers from reporting outbreaks in their farms. — **Sheldeen Joy Talavera**

# Low metal prices loom as some mining firms face cost pressures

THE mining industry faces a period of declining prices for industrial metals a year after some companies had to deal with increased costs, analysts said.

"Prices of industrial metals have settled lower, and we can theorize that several mining companies will be affected by that," Luis A. Limlingan, head of sales at Regina Capital Development Corp., said in a Viber message.

The filing of full-year earnings to the stock exchange indicated that some mining companies suffered losses last year due to cost pressures and poor weather, which dampened output.

"Two factors that would significantly affect their revenue would be the reopening of the global economy and, more important, where the price of industrial metals will go towards in the remaining months of 2023," said Mr. Limlingan.

Philex Mining Corp. reported an earnings drop of nearly 27% to P1.8 billion on a 5.5% decline in revenue to P9.26 billion.

Global Ferronickel Holdings, Inc. reported a decline in attributable income of 0.65% to P1.96 billion. Revenue slipped 13% to P6.73 billion.

Atlas Consolidated Mining and Development Corp. reported a 16.6% decline in net profit to P3.22 billion on higher operating costs. Revenue fell 4.4% to P17.68 billion.

Benguet Corp.'s net profit fell 6.3% to P1.33 billion in 2022, off a 5% rise in revenue to P4.03 billion.

This year, Mr. Limlingan said most miners are forecasting favorable weather, allowing them more days of operation.

### PROFIT GAINS

The mining companies that reported higher profit in 2022 were buoyed by higher ore prices, as well as the impact of foreign exchange movements.

The Mines and Geosciences Bureau (MGB) said nickel ore prices remained elevated at between $3.70 and $11.86 per pound in 2022, with gold at $1,802.82 per troy ounce.

On the other hand, the price of copper fell to $4 while silver fell to $21.76 per troy ounce.

The value of metallic mineral output grew 31.73% to P238.05 billion, the MGB said.

Apex Mining Co., Inc. posted the highest growth in attributable income last year of 316.1% to P3.34 billion. Consolidated revenue rose 39% to P10.31 billion. Gold and silver revenue both rose to P6.97 billion and P455.81 million, respectively.

Nickel Asia Corp., the country's largest producer of lateritic nickel ore, posted a 1.5% increase in attributable net income to P7.93 billion. It reported a 2.2% increase in revenue to P2 billion.

In a Viber message, Rizal Commercial Banking Corp. Chief Economist Michael L. Ricafort said that geopolitical risks caused metal prices to rise last year.

Both Mr. Ricafort and Mr. Limlingan cited the reopening of China, the country's biggest market on nickel supply, as a possible prop for demand.

"There are also proposals to tax mineral ore exports, similar to Indonesia, to encourage more smelting/mineral processing investments and facilities to be established in the country as well as raise additional tax revenues," Mr. Ricafort said.

Chamber of Mines of the Philippines Chairman Michael T. Toledo said another driver for the industry is the Philippines' intention to reduce carbon emissions.

He said that this will trigger the demand for raw materials for the production of electric vehicles (EVs) and renewable energy facilities. — **Sheldeen Joy Talavera**

OPINION

# Significance of prescriptive period of assessment

LET'S TALK TAX

PENELOPE GERMAINE D. SERNANDE

Most taxpayers have six days left before the deadline for filing the Annual Income Tax Return (AITR) for the calendar year 2022, the last day for which is April 17. With the filing of the AITR, the power of the Bureau of Internal Revenue (BIR) to assess and examine whether correct taxes were paid begins. However, the power of the BIR to assess deficiency taxes is not limitless.

Taxes are the lifeblood of the government and must be collected without hindrance. Taxes are the government's primary means of generating the funds needed to support its operations and see to the general well-being of the people.

Nevertheless, the Supreme Court (SC) held that, in the case of *Kepco Philippines Corp. v. Commissioner of Internal Revenue (CIR), G.R. Nos. 225750-51*, the power of taxation should be exercised with caution to minimize the proprietary rights of a taxpayer. It must be exercised fairly, equally, and uniformly, lest the tax collector kill the goose that lays the golden egg. To maintain the general public's trust and confidence in the government, this power must be used justly and not treacherously.

The National Internal Revenue Code (NIRC), as amended, provides protection to taxpayers against tax audits by the BIR. Among the rules that protect taxpayers are the Statute of Limitations, which refers to the period during which the BIR can assess and collect taxes. The prescriptive period in making an assessment depends upon (a) whether a tax return was filed, (b) whether the tax return filed was either false or fraudulent, or (c) whether a waiver of the statute of limitations was executed.

### GENERAL RULE ON PRESCRIPTIVE PERIOD OF ASSESSMENT

Section 203 of the NIRC provides that an assessment of internal revenue tax under ordinary circumstances must be made within three years counted from the period fixed by law for the filing of the tax return or the actual date of filing, whichever is later.

Thus, the three-year period starts to run differently for the various tax types. For example, an annual income tax return for a taxpayer observing the calendar year filed on April 15 will start the clock on the prescriptive period on this day. However, for a quarterly VAT return filed on April 25, the period is counted from that date.

Similarly, the Court of Tax Appeals (CTA), En Banc, held in the case of *CIR v. Carmona, C.T.A. EB Case No. 1324,* that the Final Assessment Notice issued on July 25, 2011 and received by the taxpayer on Aug. 11, 2011, for all the pertinent quarters for the year 2007 was invalid. The CTA counted the three years from the various dates that the quarterly VAT Returns and the Income Tax Returns were filed. The BIR had only until Jan. 31, 2011 and April 15, 2011, at the latest, within which to issue the FAN against the taxpayer for deficiency VAT and Income Tax, respectively. As such, BIR's right to assess the taxpayer within the three-year prescriptive period had prescribed.

Consequently, taxpayers should check the prescriptive period for each tax type as some may prescribe earlier than others.

### EXCEPTIONS

The exceptions to the three-year prescriptive period of assessment are (1) in case of extraordinary circumstance and (2) the execution of a waiver of the statute of limitations.

**I. Extraordinary circumstance**

The first exception is found in Section 222 (a) of the NIRC which explains that BIR may assess the tax within a period of 10 years from the discovery of a false or fraudulent return with the intent to evade tax or failure to file a return. This basically makes these circumstances imprescriptible, as the 10-year period starts from discovery. Hence, there may be assessments that can be made decades after the taxable years because of fraud or a failure to file a return.

However, it is important to note that the BIR cannot simply avail of this period without including the basis for its allegations of falsity, fraud, and omissions committed by the taxpayer in the assessment notice.

The SC held in the case of *CIR v. Fitness by Design, Inc., G.R. No. 215957,* that to avail of the extraordinary period of assessment in Section 222 (a) of the NIRC, the Commissioner of Internal Revenue has the burden of proving that the facts exist to evidence fraud. In this case the assessment for taxable year 1995 was issued only in 2004. However, the Supreme Court did not apply the 10-year period for the failure of the Commissioner to prove that the taxpayer deliberately failed to reflect its true income in 1995.

Nonetheless, the SC ruled in the case of *CIR v. Estate of Toda, Jr., G.R. No. 147188*, that "fraud" in its general sense, is deemed to comprise anything calculated to deceive, including all acts, omissions, and concealment involving a breach of legal or equitable duty, trust, or confidence justly reposed, resulting in the damage of another, or by which an undue and unconscionable advantage is taken of another. In this case, the SC applied the 10-year prescriptive period. The BIR was able to prove that the sale of the property first to Altonaga then to Royal Match, Inc., was merely a tax ploy, a sham, and without business purpose and economic substance. Doubtless, the two sales were executed to mislead the BIR with the end in view of reducing the consequent income tax liability and without any business purpose. In effect, the transactions resulted more in the mitigation of tax liabilities than for legitimate business purposes which constitutes tax evasion.

**II. Waiver of statute of limitations**

The second exception is provided under Section 222 (b) of the NIRC which allows the execution of the waiver of the defense of prescription. The waiver is a bilateral agreement between a taxpayer and the BIR to extend the period of assessment to a certain date beyond the three-year period. There is no limitation as to the length of the extension as long as it is agreed upon by the taxpayer and the BIR. In addition, the extended period may be further extended by the execution of another before the expiration of the original or the first extension. Hence, it is not uncommon to expect the BIR to request a new waiver before the current waiver expires.

In case the BIR requests a waiver, the taxpayer should always assess whether a waiver is advantageous to him or if it will just unnecessarily lengthen the assessment process. Factors to consider may be the time needed to produce the additional documents requested by the BIR, if any, or additional time needed to discuss and controvert the remaining findings of the BIR.

Nevertheless, the waiver of the statute of limitations is not a waiver of the right to invoke the defense of prescription. In the case of *Universal Weavers Corp. v. Commissioner of Internal Revenue, G.R. No. 233990,* the SC ruled that a waiver of the statute of limitations under the NIRC, to a certain extent, is a derogation of the taxpayers' right to security against prolonged and unscrupulous investigations conducted by revenue officers. Make no mistake, it is not a renunciation of the right to invoke the defense of prescription. The SC further ruled that it is, therefore, imperative that the waiver is carefully and strictly construed and duly compliant with the present guidelines and procedural requirements prescribed by the BIR to serve its purpose of affording protection to the taxpayer.

In summary, the purpose of the statute of limitations on the assessment is to safeguard the interest of the taxpayer from unreasonable examination, investigation, or assessment. Accordingly, the government must assess internal revenue taxes on time to prevent extending indefinitely the period of assessment. Taxpayers must be given the assurance that they will no longer be subjected to further investigation for taxes after the expiration of the reasonable periods set by law. Thus, when the assessment is issued beyond the prescriptive period, the government's right to collect deficiency taxes also prescribes. Simply put, the failure of the BIR to comply with the aforesaid prescriptive periods ends its power to assess and starts the taxpayers' right to invoke prescription.

*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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