Budget release rate hits 81.9% at end of March

THE Department of Budget and Management (DBM) said it had released P4.31 trillion or 81.9% of the 2023 national budget at the end of March.

Some P954.4 billion of the P5.268-trillion budget for this year remains undistributed, according to the DBM Status of Allotment Releases report.

The pace of releases was ahead of the 69.4% rate at the end of March 2022.

Releases to government agencies and departments amounted to P2.95 trillion, for a utilization rate of 93.8%.

Special Purpose funds released totaled P147 billion or 28.6% of the budgeted funds for the year.

Releases for Automatic Appropriations stood at P1.07 trillion, or 66.4% of the total.

These include the P240.76 million for retirement and life insurance premiums of various National Government agencies and P10 billion for the Rice Competitiveness Enhancement Fund. — **Luisa Maria Jacinta C. Jocson**

No need for legislation to effect LANDBANK, DBP merger — GCG

THE Governance Commission for GOCCs (GCG) said that the merger of the Land Bank of the Philippines (LANDBANK) and the Development Bank of the Philippines (DBP) does not require legislative intervention.

The GCG, which oversees government-owned and -controlled corporations (GOCCs), said it conducted a study on the issues raised by the merger, and found that the banks can be combined even though they both received their charters from Congress.

"The study aims to resolve the legal issues raised by the DBP Chairman and the Secretary of Finance in a sectoral meeting held at the Office of the President," the GCG said in a statement on Monday.

In March, President Ferdinand R. Marcos, Jr. gave the go signal for the merger of the state-run banks. The merger is expected to be completed by the end of the year.

The GCG said that concerns were raised by the DBP that "both banks were statutorily created and must therefore be merged through legislation."

"In order to resolve the issue, GCG sought answers through the provisions of statutes and applicable jurisprudence on the matter," GCG Chairman Alex L. Quiroz said.

The study concluded that the President can go ahead with a merger "without waiting for Congress to file and pass related bills."

It also found that the GCG has adequate authority to merge GOCCs.

"The GCG has the power to ascertain the manner of the merger — either de jure merger or de facto merger," Mr. Quiroz added. — **Luisa Maria Jacinta C. Jocson**

Wholesale price growth eases in Feb. as inflation slows

WHOLESALE PRICE growth slowed to 6.8% in February, the Philippine Statistics Authority (PSA) reported on Monday, with the central bank's monetary tightening starting to take effect to contain inflation, analysts said.

Preliminary data from the PSA indicated that the general wholesale price index (GWPI) rose by the lowest rate in two months or since the 6.7% posted in December.

The February reading was below the 7% reported in January but higher than the year-earlier 5.6%.

In the year to date, the GWPI averaged 6.9%, well up on the 5.1% posted a year earlier.

In an e-mail, ING Bank N.V. Manila Senior Economist Nicholas Antonio T. Mapa said rate hikes by the Bangko Sentral ng Pilipinas (BSP) to counter inflation probably "sapped" demand, which led to slower price growth in February.

Prices of mineral fuels, lubricants and related materials contributed to the GWPI slowdown, rising 5.6% in February from the 14.2% reported in January.

"Moderating global energy prices may be surfacing onshore, leading to the dip to 5.6%," he added.

Among the eight commodities in the index, six posted slower growth. Price growth in crude materials, inedible except fuels slowed to -31.2% in February from -27.2% in January, as did that of chemicals including animal and vegetable oils and fats (-1.2% from 0.1%).

Manufactured goods classified chiefly by materials posted 6.1% price growth in February from 3.9% in January.

In a Viber message, Asian Institute of Management Economist John Paolo R. Rivera said that the slowdown in the GWPI reflects the delayed impact of monetary tightening by the BSP.

"We are now seeing the expected effects of policy adjustments. It may have taken time due to sticky prices and slow adjustments of economic agents or market players," he said.

Among the major island groups, wholesale price growth in Luzon and Mindanao slowed to 7% in February from 7.2% in January, and to 5.1% from 5.5%, respectively.

Price growth in the Visayas came in at 5.3% in February from 4.9% a month earlier. This was the highest reading since the 5.6% posted in December.

In Luzon, six commodities also posted slower price growth led by mineral fuels, lubricants and related materials, which came in at 5.4% from 14.8% the previous month.

Price growth slowed for one commodity in the Visayas (mineral fuels, lubricants and related materials at 5.1% in February from 8.6% in January), while two commodities posted slower growth in Mindanao (Food at 8.8% from 10.3%, and chemicals including animal and vegetable oils and fats at 0.4% from 0.5%).

Inflation fell to 7.6% in March from 8.6% in February. This was the lowest reading since the 6.9% posted in September.

Core inflation remained high at 8%, the highest level since the 8.2% posted in December 2000.

Analysts said the market has still not resolved the issues that are keeping prices high.

"The problems in supply chain and production (are) still persistent. These have to be addressed because monetary tightening can only do so much and may harm the economy in the long run," Mr. Rivera said.

"We can see a downward trajectory for prices although we believe inflation should remain sticky and return to BSP's target only by the end of the year," ING Bank's Mr. Mapa said. — **Bernadette Therese M. Gadon**

Marine protection schemes urged for disputed Philippine waters

THE PHILIPPINES must still protect disputed waters off its western coast to preserve biodiversity and ensure the sustainability of its fisheries, marine scientists said.

"The Philippines lacks policies to support marine scientific research," Deo Florence L. Onda, deputy director for research in the University of the Philippines Marine Science Institute (MSI) said.

Mr. Onda said the MSI is also pushing for the establishment of a department of fisheries and oceans as 82% of Philippine territory consists of water.

"It deserves an entire agency that will take care of the resources that we have in the blue waters of the country," he said.

Mr. Onda said the West Philippine Sea suffers from overfishing and destructive fishing.

The intrusion of other countries has also contributed to the decline in the health of the environment there from poaching and illegal fish harvests.

Mr. Onda said many areas in the West Philippine Sea remain productive, such as Ayungin Shoal.

"Ayungin Shoal has been a hotspot for geopolitical tensions... but our studies show how productive Ayungin Shoal is," he said.

Meanwhile, Ma. Carmen Ablan-Lagman, a Biology professor at De La Salle University, said the Kalayaan island group produces about 17 metric tons (MT) of fish per square kilometer (km^2) per year.

The fishermen who ply these waters, based in Masinloc, Zambales, are estimated to have been denied access to 13 MT of fish per km^2 annually due to China-imposed fishing restrictions.

"The resources in that area are worthy of protection mainly not just because of the uniqueness of the things in there but the potential of the place," she said. — **Sheldeen Joy Talavera**

LNG prices seen hindering growth in use of gas in Asia

VOLATILE PRICES of liquefied natural gas (LNG) will hold back demand in Asia in the next few years, with new supply coming onto the market by 2025, the Institute for Energy Economics and Financial Analysis (IEEFA) said on Monday.

"Emerging Asian economies are widely forecasted to be the largest growth market for LNG demand globally over the next several decades. However, IEEFA expects that tight global markets and elevated prices may continue to restrain Asia's LNG demand growth," IEEFA said.

The Philippines is transitioning to gas imports with the depletion of the Malampaya field. Various companies are building LNG receiving terminals to service the import market.

San Miguel Global Power Holdings Corp. is expecting an LNG shipment to arrive this month. Its supplier, Vitol Asia Pte. Ltd., said it is on track to deliver the Philippines' first LNG cargo.

"We are pleased and excited to have worked closely with our partner San Miguel Global Power on this historic and first LNG cargo into the Philippines," Vitol Asia said on its website.

To date, seven LNG terminal projects have been approved by the Department of Energy, two of which are expected to come online in the first half of 2023.

The LNG terminals of First Gen Corp. and Linseed Field Power Corp., a unit of Atlantic Gulf & Pacific Co., are expected to become operational this year.

In the first quarter, IEEFA said that LNG demand is declining despite a downturn in global prices for the fuel.

Jephraim C. Manansala, chief data scientist at the Institute for Climate and Sustainable Cities, said that while Asian LNG spot prices are currently at their lowest in 21 months, they remain much higher than pre-pandemic levels of around $3 per million British thermal units (mmBtu).

LNG prices have now declined to $12.50 per mmBtu from a peak of $70.50 in August, Reuters reported.

"This highlights the high costs and inherent volatility of LNG prices in the global market, which may have implications for the Philippines' electricity prices and economic sustainability," Mr. Manansala said.

He said dependence on imports leaves the Philippines vulnerable to price fluctuations and external forces.

"We have not felt the impact of spiking LNG prices yet since the first LNG terminals are still to be commissioned this year, but the volatility of LNG prices remains a concern," Mr. Manansala added. — **Ashley Erika O. Jose**

NCR construction materials bulk price growth slows in March

GROWTH in the wholesale price of construction materials in Metro Manila came in at a seven-month low in March as inflation eased with interest rates driven higher, an analyst said.

Preliminary data from the Philippine Statistics Authority on Monday indicated that the construction materials wholesale price index (CMWPI) in the National Capital Region (NCR) rose 7.7% year on year in March, easing from 9.1% in February but still higher than the year-earlier reading of 6.6%.

This was the slowest CMWPI reading since the 7% posted in August.

For the first quarter, the CMWPI averaged 8.7%.

Security Bank Corp. Chief Economist Robert Dan J. Roces said the global economy continues to recover from the coronavirus disease 2019 (COVID-19) pandemic and the reopening could lead to more demand for construction materials, which could push prices higher.

"However, global supply chain disruptions and logistical challenges may constrain the supply of these materials, which could put downward pressure on prices," he added in an e-mail.

Among the 17 commodity groups, fuels and lubricants contributed the most to the slowdown of price growth, contracting 8% after posting growth of 1.4% in February.

Also posting slower growth were tileworks (1% in March from 4.2% in February), and reinforcing and structural steel (7.1% from 10%).

Four commodity groups posted price growth in March: painting works (12.9% from 11.6% in February); hardware (7.7% from 7.1%); doors, jambs, and steel casements (6.1% from 5.8%); and plumbing fixtures and accessories/waterworks (4.1% from 3.9%).

Mr. Roces said fuel prices in the next few months will remain volatile and "are likely to continue to be influenced by various factors such as global oil prices, supply and demand dynamics, and geopolitical tensions."

Mr. Roces added that construction demand will continue to rise this year.

"In terms of the outlook for prices of building materials, it is expected that the recovered economy will be able to keep up with the high-interest rate environment, and construction projects may continue to trend up this year," he said. — **Bernadette Therese M. Gadon**

OPINION

The grant and taxation of public service franchises

LET'S TALK TAX
KIM M. ARANAS

On March 21, 2022, RA No. 11659, otherwise known as an Act Amending CA No. 146 or the Public Service Act, was signed into law, thereby amending the decades-old Public Service Act. With the end view of attracting foreign investment to boost market competitiveness, foster innovation, and create high-quality jobs, other public service businesses such as airports, railways, and expressways may now be owned 100% by foreign entities subject to the grant of administrative franchise by the agency tasked to oversee or regulate these undertakings.

As required under the law, the National Economic and Development Authority (NEDA) passed the implementing rules and regulations (IRR) on March 20, 2023. With these recent reforms, one must ascertain a public service franchise is required and its peculiar tax consequence.

PUBLIC UTILITIES VIS-À-VIS PUBLIC SERVICE BUSINESSES WITH PUBLIC INTEREST

Section 11, Article XII of the 1987 Philippine Constitution expressly provides that, "No franchise, certificate, or any other form of authorization for the operation of a **public utility** shall be granted except to **citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least 60 per centum of whose capital is owned by such citizens**, nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than 50 years."

With the amendment under RA No. 11659 and Rule III Section 10 of its IRR, public utility refers to a public service that operates, manages, or controls for public use any of the following:

1. Distribution of electricity;
2. Transmission of electricity;
3. Petroleum and petroleum products pipeline transmission systems;
4. Water pipeline distribution systems and wastewater pipeline systems, including sewerage pipeline system;
5. Seaports; and,
6. Public utility vehicles (PUVs).

As public utilities, foregoing industries are still governed by the constitutional rules on Filipino ownership of 60% while foreigners may own up to 40% of the capital whether directly or indirectly. A public service business not included in the foregoing enumeration may be owned 100% by foreign nationals except if it is considered critical infrastructure, as is telecommunications, or otherwise identified as such by the President pursuant to NEDA's recommendation.

LOCAL TAX OBLIGATION OF A FRANCHISE GRANTEE

As enunciated under the Act and its IRR, while the administrative agencies will no longer impose any citizenship requirement for those public service businesses not listed as public utilities, they are still empowered to grant administrative franchises and monitor and audit the public service entities. Now, what are the peculiar tax considerations that these grantees should take into consideration?

In *New Vision Satellite Network, Inc. v. Province of Cagayan*, G.R. No. 248840, July 5, 2021, our High Tribunal clarified on the distinction between a franchise and a secondary license or permit. For a franchise grantee, it follows that the local government (province or city) may impose the franchise tax thereon in addition to other national tax obligations.

The Supreme Court explained this distinction as such:

First, a survey of franchises recognized in jurisprudence shows that they involve: (i) public utilities and common carriers; (ii) economic activities which are in the nature of natural monopolies, or industries where the most efficient number of operators is one or only a few; (iii) industries where the first entrants or incumbents have near monopoly status because of prohibitive fixed costs, economies of scale, and network effects, such that the first entrants or incumbent market players have a high degree of market dominance that impose an insurmountable barrier on potential entrants to enter the market and compete; and (iv) industries that require the use of natural resources or other scarce resources (such as the airwaves), which utilization thereof necessitates the exclusion of other persons or entities. *Second*, economic activities covered by franchises are typically charged with public use. *Third*, the delegation of the authority to exercise the sovereign power of eminent domain is unmistakably a grant of franchise. This is typical in public utilities where certain public infrastructure facilities require the compulsory sale of lands and acquisition of right of way and other properties to give way to public use.

As such, tollway operators, broadcast systems, telecommunication systems and light railway operators require the grant of franchise given the nature of their business as opposed to virtual currency platform operators, pawnshops, financing or lending companies, which only need to secure a secondary license or permit. The Supreme Court notes that in the case of a financing company, lending company, virtual currency exchange operator, pawnshops, and other similar regulated entities requiring a secondary license in addition to general business and local permits, there can be as many market players as are qualified and eligible under the specific laws regulating the business activity. This is because these entities are not engaged in industries which are natural monopolies, or industries where first entrants do not have monopoly or near-monopoly status. Succeeding market players are free to enter the market as long as they comply with the requirements for the issuance of the administrative license to operate these businesses. Moreover, the requirement of obtaining government permits to operate these businesses is merely within the dictates of general welfare, and not because the economic reality of the industry involves scarce resources.

Hence, other than the license or permit to operate, it is crucial for public service companies to secure administrative franchises with the relevant governing agency and pay the local franchise tax. It must be noted that public service franchise grantees are subject to national taxes under the Tax Code except if it is a franchise grant allowing payment of a fixed national franchise tax in lieu of other taxes.

If implemented properly, this landmark reform could usher in a new economic era of public services in the Philippines that are world class and globally competitive, along the way strengthening the fiscal standing of local government units via the local taxes collected from administrative franchise grantees.

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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