NAIA privatization 'doable' by early 2024

THE privatization of the Ninoy Aquino International Airport (NAIA) could kick off in the first quarter of 2024, the Department of Transportation (DoTr) said.

"That is a very tough and tight schedule. We can say that is doable in the first quarter of next year. It is doable that there will be a conclusion that could possibly be proclaimed by the government," Undersecretary for Aviation and Airports Roberto Lim said in an interview with ANC.

"That takes time. If there is more than one participant, we will have to talk to all of them. It will take time," he said.

Mr. Lim said that the privatization will help improve the airport's efficiency in terms of passenger and flight movements while generating more income for the government.

Mr. Lim said he expects no job losses upon the airport's privatization as the Manila International Airport Authority (MIAA) will remain its regulator.

"The relationship between MIAA and the concessionaire will be regulator-operator. The MIAA will continue to operate as a body that will regulate, oversee," he said.

"Generally, no loss of employment. Airport employees will be offered the opportunity to work when the airport facilities are privatized," he added.

Mr. Lim said that the airport will still belong to the government even after the privatization with the concessionaire limited to an operations and management role.

Last week, the DoTr and the MIAA submitted a joint proposal for the NAIA solicited public-private partnership project for approval by the National Economic and Development Authority.

Under the proposal, the private concessionaire will have 15 years to operate the airport and recover its investment.

Solicited and unsolicited modes are both being pursued by the DoTr and MIAA with the assistance of their Transaction Advisor, the Asian Development Bank.

In April, the Manila International Airport Consortium, consisting of six Philippine conglomerates and Global Infrastructure Partners (GIP) of the US, submitted an unsolicited proposal to the government.

The consortium is composed of Aboitiz Infracapital, Inc., AC Infrastructure Holdings Corp., Asia's Emerging Dragon Corp., Alliance Global – Infracorp Development, Inc., Filinvest Development Corp., JG Summit Infrastructure Holdings Corp. and GIP. — **Justine Irish D. Tabile**

PHL metal output up 22.83% by value in Q1

PHILIPPINE metal production by value rose 22.83% in the first quarter on stronger prices and higher output of gold, nickel ore, and chromite, according to the Mines and Geosciences Bureau (MGB).

In a report, the MGB said the value of production was P58.92 billion, of which gold accounted for P27.74 billion or 47.08%.

Nickel ore and other nickel byproducts were valued at P23.85 billion, copper P6.52 billion, and combined output of silver, chromite, and iron P0.81 billion.

The price of gold increased by $14.14 from a year earlier to $1,889.05 per troy ounce.

Nickel ore prices fell to $12.74 per pound during the quarter from $11.78 a year earlier while those of copper fell to $4.53 per pound from $4.05.

Silver prices dropped $1.02 year on year to $22.94 per troy ounce.

"If we go beyond the review period by looking closely at the second half of 2022, the prices during the first quarter of 2023 were still at a higher level and prices are still way above their pre-pandemic levels," the MGB noted.

In terms of volume, gold output grew 17% to 8,327 kilograms while that of nickel direct shipping ore rose 5% to 3,997,829 dry metric tons (DMT).

Chromite production increased 14% year on year to 20,496 DMT.

Copper and iron ore production, on other hand, dropped 0.17% to 64,730 DMT and 24% to 33,497 DMT, respectively.

"The outlook for the minerals sector remains optimistic with the expected growth in the demand for nickel and gold," the bureau said.

"This expectation will be driven by the lifting of China's zero COVID-19 policy last December," it added.

The MGB also reported that the government is "looking for ways to level up the country's mineral markets in the field of semi-processed and fully processed mineral products" through establishing processing, refineries, and downstream industries.

"This move will also strategically position the country both in the value chain and the global supply chain and eventually level up its position from a mere vendor of ores," the MGB said. — **Sheldeen Joy Talavera**

Philippines receives second-most climate financing in ASEAN at $1.6B per year, behind only Indonesia

THE PHILIPPINES is the number two recipient of climate financing in Southeast Asia, after Indonesia, the Lowy Institute said in a report.

"Climate development finance disbursements to the Philippines average $1.6 billion per year, making it the second-largest destination of such finance in the region, behind Indonesia," it said.

"The Philippines is highly vulnerable to natural hazards, facing some of the highest disaster risk levels in the world. Accordingly, multi-hazard response preparedness is the primary purpose of finance for principal projects," it added.

In 2021, climate development finance to the Philippines was a cumulative $11.1 billion, against Indonesia's $16.3 billion.

"In Southeast Asia's larger emerging economies such as Vietnam, Indonesia, and Philippines, official development financing (ODF) is a major source of finance for critical development priorities. All of this makes an understanding of the scale and contours of ODF in Southeast Asia of critical interest to governments in the region and their development partners," it said.

In the Philippines, financing classified as other official flows are a major form of climate development finance, accounting for 68% of all climate-related disbursements.

The Asian Development Bank was the biggest provider of climate development finance in the Philippines, it said. — **Luisa Maria Jacinta C. Jocson**

Marcos sees streamlining of gov't processes improving climate for private-sector 'partners'

PRESIDENT Ferdinand R. Marcos, Jr. said on Wednesday that the streamlining of government processes, including permit issuance and tax administration, will make the investment environment more attractive for private-sector partners.

In a speech before a gathering of the Federation of Filipino-Chinese Chambers of Commerce and Industry, Inc. (FFCCCII), Mr. Marcos added that public-private partnerships will remain an important element of his governance toolkit.

"As part of this administration's agenda, partnership with the private sector has been actively pursued and nurtured in recognition of this essential role that you play in our development," Mr. Marcos said.

"We are now exerting efforts to provide and improve our tax administration and fiscal incentives system amongst other strategic interventions," he said. "We are also streamlining existing regulatory mechanisms through expedited and integrated processes and digitalization of key government services."

Mr. Marcos said his administration has acted to address issues raised by the FFCCCII last year.

"We will continue to listen and exert efforts to improve the business climate and foster ease and efficiency of doing business. We have taken note of the issues that you have raised during our meeting last year and have already initiated many steps and adjustments to address those challenges," he said. — **Kyle Aristophere T. Atienza**

RCEP, IPEF expected to strengthen PHL-Japan bilateral relationship

THE Department of Trade and Industry (DTI) said two trade deals are expected to strengthen the Philippines-Japan economic relationship.

The DTI said in a statement on Wednesday that the Regional Comprehensive Economic Partnership (RCEP) and the Indo-Pacific Economic Framework (IPEF) are already producing agreements to deepen ties between the two countries.

Trade Secretary Alfredo E. Pascual and the Japanese Economy, Trade, and Industry Minister Yasutoshi Nishimura agreed to explore investment in energy, critical minerals, carbon neutrality, innovation, and digital trade under RCEP, which the Philippines recently joined.

"These strong economic relations can be further strengthened by the IPEF which is currently under negotiations," the DTI said.

According to the DTI, Japan was the Philippines' No. 2 trading partner in 2022, with the Philippines serving as a crucial market for Japanese exports.

The ASEAN-Japan Business Week 2023 resulted in investment agreements with Japanese companies like ITOCHU Corp., Nidec Drive Technology Corp., and Murata Manufacturing Co., Ltd.

ITOCHU subsidiary DOLE Philippines, plans to increase pineapple production volume to 1 million metric tons by 2025.

Meanwhile, Nidec will expand the production capacity of its nearly four-hectare plant in Subic to close to 300,000 pieces at peak operations, equivalent to P5.1 billion in export receipts for the Philippines.

Murata, which operates in the Philippines as Philippine Manufacturing Co. of Murata, Inc., will be expanding its multilayer ceramic capacitor business in response to growing demand in the automotive industry.

According to the DTI, the Murata unit has invested P33 billion in its manufacturing facility, which employs 3,300 workers. The company has generated export sales of $1.27 billion since 2012.

"With their long and established presence in the Philippines, sogo shoshas, or trading companies, have played a large role in the development of the country's economy," the DTI said.

"Japan's sogo shoshas are beginning to branch out in the Philippines from the traditional space of trade and investment to integrated financing, logistics and commercial distribution, digitalization, green energy, environment, food security and all-around pioneering technologies," it added. — **Justine Irish D. Tabile**

OPINION

'Directly and exclusively used'

TAXWISE OR OTHERWISE
JOHN EDGAR S. MAGHINAY

The CREATE Law (Republic Act No. 11534) which took effect in 2021 introduced tax reforms which are thought to benefit the government and the country in the long run. The law rationalized tax incentives granted to enterprises registered with Investment Promotion Agencies (IPAs) while also amending the powers vested upon such agencies. Primarily, the law put a timeline on the incentives by limiting the number of years that Registered Enterprises or REs (those registered with various IPAs such as BoI, PEZA, etc.) may enjoy certain tax incentives, and made the incentives uniform across all IPAs.

To implement the value-added tax (VAT) provisions of the CREATE Law, the Bureau of Internal Revenue (BIR) issued Revenue Regulations (RR) No. 21-2021, defining what transactions are subject to 0% VAT. The RR basically enumerates expenses that would fall under the phrase "direct and exclusive use" in the registered activity. It also imposed administrative requirements (e.g., endorsement from the IPA) before the VAT incentives can be enjoyed.

The RR attracted a lot of inquiries (to say the least) such that affected taxpayers and their suppliers sought clarification as to how the phrase "used directly and exclusively" should be defined. More specifically, what expenses may qualify under this phrase.

As such, the BIR issued Revenue Memorandum Circular (RMC) No. 24-2022 to clarify the phrase. The RMC provided guidance on the documentary support needed for RE suppliers to obtain prior BIR approval for the VAT zero-rating. It also specifically mentioned that legal, accounting and other such services do not qualify as expenses used directly and exclusively in the registered activities of an RE.

Now comes RR 3-2023, which was issued on April 20. In my view, there are the important points which must be (re)considered.

The following services were specifically identified as not "directly and exclusively used" in the registered project or activity of an RE:

1. Janitorial services;
2. Security services;
3. Financial services;
4. Consultancy services;
5. Marketing and Promotion; and
6. Services rendered for administrative operations such as Human Resources (HR), legal and accounting.

This is a sort of "Negative List" of services where 12% VAT may be passed on to an RE by its service providers. Note though that even with this Negative List, the RR still allows the REs a measure of flexibility. As long as the RE is able to provide supporting evidence to the IPA, justifying that the purchase of the above-listed service items can be categorized as "directly and exclusively used" for their registered activities, such expenses may still be entitled to 0% VAT.

Flexibility is key since although the expenses listed above may not qualify as "directly and exclusively used" in the registered operations of the REs, they are necessary for them to do business in the Philippines. Some of these expenses are even incurred to comply with regulatory requirements. Now, REs will be further burdened by the added cost of the 12% VAT, which will be passed on by suppliers.

The RR also reiterated the guidance provided in RMC 24-2022 for the IPAs when issuing the VAT Zero Rating Certification. As provided in the regulation, "In issuing the 0% VAT certification, the concerned IPA shall be guided by the rule that such local purchases of services are directly attributable to the registered project or activity without which such registered project or activity cannot be carried out. These are costs that are indispensable to the project or activity, i.e., without which the project or activity cannot proceed, and these include expenses that are necessary or required depending on the nature of the registered project or activity of the export enterprise."

While there are no guidelines yet as to the procedures that REs need to follow if they are going to justify such expenses as directly and exclusively used in their registered activities with the IPAs, the BIR has the right to conduct a post-audit verification of goods/services which were subjected to 0% VAT. However, if a VAT zero rating Certification has already been issued by the IPAs, this should be given great weight. It must be assumed that REs were able to properly support the nature of the relevant expenses as they relate to the definition of the phrase 'direct and exclusively used.' Otherwise, the efforts of both the REs and IPAs would be futile.

As before, where the purchased goods or services are used in both the registered project or activity and administrative operations, the RE may apply the best allocation method to allocate such purchases. However, note that if a proper allocation cannot be made, the entire purchase price is subject to 12% VAT.

A welcome development in this regulation is the fact that it will now just be the IPA that issues the 0% VAT Certification. This means that suppliers of REs are no longer required to apply for approval of VAT zero-rating with the BIR, and any pending application will be accorded 0% VAT treatment from the date of filing, as long as a 0% VAT certification has been secured from the IPA. Health Maintenance Organization (HMO) plans acquired by REs for their employees who are directly and exclusively involved in the operations of their registered projects or activities may also be categorized as "directly and exclusively used" in the registered activity.

Since some HMO plans may also cover dependents of employees, this is a case where the allocation of purchased services, as provided in the preceding paragraph, may apply.

One of the most critical issues is whether RR 3-2023 applies retroactively. PEZA, in its Memorandum Circular No. 2023-31 reiterating the provisions of the RR, said it lobbied for retroactive effectivity. This makes sense given that RR 3-2023 merely clarifies and expounds upon the provisions of RR 21-2021 and RMC 24-2022.

As it is currently worded, however, RR 3-2023 applies prospectively. In fact, the regulations only explicitly discuss what will happen to the pending VAT zero-rating applications. Nothing was mentioned about previously denied applications. I believe this should be revisited. As provided in jurisprudence, the BIR's administrative requirements should not impair a taxpayer's right to avail of tax incentives which are clearly provided under the law without any limitations. The law must always prevail.

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.

JOHN EDGAR S. MAGHINAY is a director at the Tax Services department of Isla Lipana & Co., the Philippine member firm of the PwC network.
+63 (2) 8845-272
john.edgar.s.maghinay@pwc.com