

# ICAO technical mission in town for review of CAAP operations

THE Civil Aviation Authority of the Philippines (CAAP) said it is hosting an International Civil Aviation Organization (ICAO) technical mission to assess CAAP's operations.

In a statement, CAAP said that the mission intends to analyze CAAP's air traffic management (ATM) and aeronautical information services or aeronautical infor-

mation management (AIS/AIM) systems between July 17 and July 21.

"CAAP has been constantly receiving guidance and support from ICAO, which enables us to further improve our regulatory structure and operational processes," CAAP Director General Manuel Antonio Lara Tamayo said.

"To my CAAP colleagues, remember that our primary ob-

jective is to conduct a comprehensive analysis of our ATM/AIS, and to identify priority areas, while ensuring the continuous improvement and enhancement of our services," he added.

The technical mission will include discussion between the Philippines and the ICAO Asia-Pacific Regional Office to help national regulators implement ICAO stan-

dards and recommended practices, procedures for air navigation services, and regional plans.

CAAP Air Traffic Service and Aerodrome and Air Navigation Service Safety Oversight Office personnel and ICAO representatives are expected to attend the week-long activity.

"The ICAO Representatives will observe and provide recom-

mendations on ATC operations and systems in the Manila Area Control, Approach Control, and Aerodrome Control facilities," the CAAP said.

"The results of the mission will be used to help the Philippines improve its ATM and AIS systems and meet ICAO standards which will ultimately aid in ensuring the safety and efficiency of air traffic

and air travel in the Philippines," it added.

On July 9, the Department of Transportation announced that five representatives from the ICAO will be conducting an audit of the Ninoy Aquino International Airport and Mactan-Cebu International Airport, which will run between July 10 and 21. — **Justine Irish D. Tabile**

# House bill seeks to ban LGUs obstruction of national projects

A BILL seeking to bar local government units (LGUs) from interfering with National Government (NG) projects has been filed at the House of Representatives.

The proposed National Government Projects Implementation Act is expected to accelerate the rollout of NG infrastructure, health, education, and other projects.

"There have been instances where local government units have obstructed or delayed the implementation of (NG) projects, causing unnecessary delays and additional costs," Zamboanga City Rep. Khymer Adan T. Olaso said in the bill's explanatory note.

House Bill No. 8300 only allows LGU intervention when it is specifically requested by the agency in charge of implementing the project.

If signed into law, interfering LGU officials could be liable for administrative, civil, or criminal penalties. Other details of the bill are expected to be fleshed out in the implementing rules and regulations, to be drafted by the Department of the Interior and Local Government.

The bill may need to be harmonized with Section 2(c) of Republic Act No. 7160 or the Local Government Code, which requires

"all national agencies and offices to conduct periodic consultations with appropriate local government units, nongovernmental and people's organizations, and other concerned sectors of the community before any project or program is implemented in their respective jurisdictions."

Section 25(b) of the Code also states that "national agencies and offices with project implementation functions shall coordinate with one another and with the local government units concerned in the discharge of these functions."

The Code also provides for the participation of LGUs both in the

planning and implementation of NG projects.

Mr. Olaso said the measure is expected to "ensure that National Government agencies and offices can carry out their mandates without unnecessary interference."

The Senate is currently discussing a separate bill seeking to institutionalize the automatic income classification of LGUs to help determine their capacity to implement projects and identify gaps that the NG can assist on. The House passed its counterpart measure in March. — **Beatriz Marie D. Cruz**

# DENR task force to assess reclamation works impact

THE Department of Environment and Natural Resources (DENR) said it will form a task force to assess the impact of reclamation activities, particularly in Manila Bay.

"We've organized the team (of Filipino scientists), and we will be taking on some foreign expertise," Environment Secretary Maria Antonia Yulo-Loyzaga told reporters on Monday on the sidelines of a reclamation forum.

"We want to assemble the team by August. Many of these have actually been involved in assessing what is happening here in Manila Bay," she said.

Ms. Loyzaga said that the team will use the Manila Bay Sustainable Development Master Plan (MBSDMP) as a baseline for the community impact assessment while collecting further data.

The MBSDMP was prepared by the National Economic and Development Authority, with support from the Dutch government.

"Reclamation, of course, is one way forward in terms of the economic development of the different areas. However, *kailangan talagang masinsinan ang* approach (we need a thorough approach that welcomes) different perspectives from all groups," she said.

According to Environment Undersecretary Jonas R. Leones, nine of the reclamation

sites in the National Capital Region cost a combined P330.6 billion over 11,143.72 hectares.

The Parañaque Reclamation Project is the largest at P76.7 billion, followed by the Pasay City Reclamation Project (P72 billion) and Navotas Coastal Bay Reclamation Project (P58 billion).

"Reclamation spurs economic activity and generates revenue for the government," Mr. Leones said. "However, reclamation should not only be confined to the economic parameters but also (viewed in) the context of environmental protection and conservation, disaster risk and climate change mitigation that are science and evidence-based," he added.

Ms. Loyzaga said the DENR is building the capacity to assess reclamation impacts by involving higher education institutions such as the University of the Philippines, as well as foreign experts.

"We are seriously concerned about (whether) the level of science... available to us as a department can meet the challenge of (promoting) marine biodiversity," Ms. Loyzaga said.

"We are at the point where we need to acknowledge that these types of outreach are necessary to effectively do our job," she said. — **Sheldeen Joy Talavera**

# 'Green lanes' touted as major selling point for investing in PHL

THE Anti-Red Tape Authority (ARTA) said "green lanes" to ease the permit process for strategic investments will play a key role in attracting foreign investment.

ARTA Director-General Ernesto V. Perez said Executive Order (EO) No. 18, which set up the green lanes will help the Philippines enhance its standing as a destination for investment in Southeast Asia.

"We are ready to take on the job of promoting foreign direct investment (FDI) and streamlining the government approval and registration processes for strategic investments," Mr. Perez said in a statement on Monday.

"We believe that this EO will help us attract more FDI and create jobs for our countrymen," he added.

EO 18, signed by President Ferdinand R. Marcos, Jr. in February, was officially launched last week. The EO designates ARTA as a member of the technical working group that will act on complaints regarding violations of Republic Act No. 9485, also known as the Anti-Red Tape Act of 2007, as amended.

The government defined strategic investments as investment pledges received by Mr. Marcos during his travel, as well as those recommended by the Fiscal Incentives Review Board to the Of-

fice of the President, foreign direct investment projects endorsed by the Inter-agency Investment Promotion Coordination Committee, and priority projects or activities listed in the Strategic Investment Priority Plan.

Separately, ARTA said that its so-called 3-7-20 timeline applies to the green lanes. This timeline refers to the time to reply to simple transactions (three working days), complex transactions (seven working days), and highly technical transactions (20 working days).

The EO also requires the Department of Trade and Industry and the Board of Investments to establish a one-stop action

center, which will serve as the single entry point for all strategic investments.

The EO applies to all National Government agencies, government-owned and -controlled corporations, other government instrumentalities, and local government units involved in the issuance of permits, licenses, and certifications or authorizations for strategic investments.

ARTA, created under Republic Act No. 11032 or the Ease of Doing Business and Efficient Government Service Delivery Act, is tasked with streamlining and digitalizing all government processes. — **Revin Mikhael D. Ochoa**

## OPINION

# Importance of valid substituted service of assessment notice

A company first line of defense is the ever-so-charming concierge and the somewhat intimidating security guards. Visitors to the premises, whether they be the general public, jobseekers, clients and customers, suppliers, or let's not forget, inspectors and other regulators, they are greeted by the reception staff. Due to the pandemic, many companies resorted to skeleton crews, but imbued the roles of front desk personnel with greater importance. Has a similar elevation of status taken place with the BIR's tax assessment process, particularly the receipt of audit notices? Let's find out.

In a ruling issued by the Supreme Court (SC), G.R. No 223767 dated April 24, 2023, the Chief Justice held that the taxing authority must comply with the requirements of a valid substituted service even with the existence of a central receiving station inside the taxpayer's registered address.

## MODE OF SERVICE OF ASSESSMENT NOTICES

Let us recall the modes of servicing assessment notices. RR No. 18-2013, amending RR No. 12-99, provides the valid modes of service of audit notices. First is via "Personal service" — by delivering a personal copy to the party at his registered or known address or wherever he may be found. A known address means a place other than the registered address where business activities of the party are conducted or his place of residence.

In cases where personal service is not practicable, the notice may be served by "substituted service or mail." Substituted service can be resorted to when the party is not present at the registered or known address. The notice may be

left at the taxpayer's registered address, with his clerk or with a person having charge thereof. If the known address is a place where business activity is being conducted, the notice may be left with a clerk, or a person having charge thereof. However, if the known address is the place of residence, substituted service can be performed by leaving the copy with a person of legal age who is a resident.

Further, if no person is found at the taxpayer's registered address or known address, the revenue officers concerned need to bring a barangay official and two disinterested witnesses to the address

to personally observe and attest to such an absence. The notice will be given to the barangay official. Such facts will be contained in the bottom portion of the notice, as well as the names, official positions, and signatures of the witnesses. The same procedure must be observed when the taxpayer refuses to receive notice.

The third mode is "service by mail," which is done by sending a copy of the notice by registered mail, reputable courier, or ordinary mail if the registry or reputable courier is not available in the locality of the addressee. It is also provided that service to the tax agent/practitioner, who is appointed by the taxpayer under circumstances prescribed in the pertinent regulations on accreditation of tax agents, is deemed service to the taxpayer.

## THE RULING

In the SC case cited earlier, the taxpayer's registered office address was 3F SM City Pampanga, Barangay San Jose, San Fernando, Pampanga. After going through the rigorous assessment process, a Formal Letter of Demand (FLD) with attached Details of Discrepancies

and Assessment Notice (DDAN) was issued by the BIR Regional Director and supposedly received by the taxpayer. The Court stated that the BIR had failed to prove that the FLD-DDAN had been actually served and received by the taxpayer or its duly authorized representative. Upon further examination, the FLD-DDAN was received by an individual in the administrative office of SM City Pampanga.

The Chief Justice had ruled that valid service of the FLD-DDAN is a crucial part of due process in the tax assessment process, without which such an assessment may be rendered void. The pertinent rule in effect at the time of issuance was RR No. 12-99, which provides that the FLD must be sent only by registered mail or personal delivery, and the service thereof shall be actually or constructively received. For there to be personal delivery, the taxpayer or the duly authorized representative must acknowledge receipt in the duplicate copy of the letter of demand, indicating the following: (a) name; (b) signature; (c) designation and authority to act for and on behalf of the taxpayer; and (d) date of receipt thereof.

On the other hand, constructive service requires (1) leaving the notice on the premises of the taxpayer and (2) the fact of such service attested to, witnessed, and signed by at least two revenue officers other than the revenue officer who constructively served the same.

For the taxpayer, the FLD-DDAN was served upon the administrative officer of SM City Pampanga, and no attempts were made to serve the same upon the taxpayer's address even though it was situated on the third floor accessible to the public and open for the BIR and its representatives to validly serve the same. BIR failed to comply with the two requisites of constructive service; thus, the service of the FLD-DDAN at the

ground floor of the administrative office SM Pampanga was declared invalid and the assessment attached therewith is untenable.

The Court has occasionally emphasized that for a taxpayer to be liable for deficiency taxes, he must first be informed of the facts and legal basis upon which the assessment is made. Failure to do the same is tantamount to failure to observe due process.

## SIMILAR CASES OF INVALID SERVICE

The case discussed earlier is not unique. Similar cases invalidating the service of assessment notices have been decided by the courts.

In one case, an assessment notice was served to an employee of a related party to the taxpayer. Since the related party is a distinct and separate entity from the taxpayer, the assessment was deemed invalid.

Another example is that the FLD was served upon a branch office of the taxpayer and received by their receptionist. The Court ruled that there was a failure to establish proper service of the FLD. The Court had discussed at length that a corporation, being a juridical person, is deemed to always be present at its address, and substituted service may only be used if personal service is impracticable. Further, the Court explained that substituted service may only be allowed to authorized representatives with actual or apparent authority. The BIR, after dealing with countless corporations and taxpayers, is aware that transactions may only be made with authorized corporate officials; mere service upon the receptionist without the prudence to locate any of the officers shall lead to the invalidity of such service.

Similarly, the Court has ruled that service by personal delivery strictly requires that the notice be served only to the taxpayer at his registered or known

address or wherever he may be found. The authority of security guards to receive official notices is confined to service by registered mail. Since there are different situations and circumstances for the taxpayers, the validity of the service remains on a case-by-case basis decided by the court.

## TAKEAWAY

The service of the assessment documents is often overlooked during the tedious tax audit process. These documents, including the Letter of Authority, Notice of Discrepancy, Preliminary Assessment Notice, and FLD, instill fear and unease in the minds of the taxpayers. As a matter of right, due process is always afforded to every taxpayer, and this includes the valid and proper service of the pertinent documents.

Always remember that making the wrong assumptions can always come back to haunt you. With the transition to hybrid work arrangements, you will encounter various people whose authority should not be taken at face value. This applies to the BIR, taxpayers, and the general public — "Don't talk to strangers."

*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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