

# DoE may set 2,400 MW goal for nuclear power by 2035

THE Department of Energy (DoE) is considering a target of 2,400 megawatts (MW) in nuclear power capacity by 2035, a goal which could be incorporated into the Philippine Energy Plan.

"We are running our numbers in terms of reliability cost. Right now, we don't have a fixed number in terms of capacity," Michael O. Sinocruz, director of the Energy Policy and Planning Bureau, said in a virtual forum hosted by the German-Philippine Chamber of Commerce and Industry.

Mr. Sinocruz said that under the Philippine Energy Plan for 2030 to 2050, the government is hoping to put about eight 150-

MW small modular reactors in operation by 2032 and establish a 1,200-MW nuclear facility in Luzon by 2035.

"We will have a firm capacity to be included in the mix in the succeeding Philippine Energy Plan, once we have a law establishing an independent atomic energy regulatory commission which is still pending in the Congress now," Mr. Sinocruz said.

The DoE has said that it expects to complete the next Philippine Energy Plan by September, which will include the share of nuclear in the energy mix.

The Philippine Nuclear Research Institute (PNRI) has said that the Philippines must create

a separate body to regulate the industry. The PNRI at the moment is both the regulator and promoter of nuclear power.

Mr. Sinocruz said that the government has not yet ruled out the rehabilitation of the Bataan Nuclear Power Plant (BNPP).

"We are not yet abandoning the possible rehabilitation of the BNPP, but we need to do a feasibility study (whether a rehab can be done) at reasonable cost. We need to commission (studies); there are several proposals that we received for the feasibility study," Mr. Sinocruz added.

Mr. Sinocruz added that the DoE is also planning to increase its target for the share of renew-

able energy (RE) in the power mix when it releases the next Philippine Energy Plan.

"We are going to target higher RE share — more than 50% — because of the entry of offshore wind; and we might consider that some capacity from coal will have to retire because of the entry of other RE technologies," he said.

Currently, the government is targeting to increase the share of renewable energy to 35% by 2030 and 50% by 2040.

As of July, the DoE has awarded a total of 73 offshore wind service contracts with an equivalent combined capacity of about 58,531 MW, Mr. Sinocruz said. — **Ashley Erika O. Jose**

## PHL international tourist arrivals exceed 3 million

THE PHILIPPINES logged over three million international visitors as of July 19, on track to meet that 4.8 million target this year, the Department of Tourism (DoT) said.

The DoT said in a statement on Wednesday that the foreign arrivals total was 3,000,079 as of July 19. Foreign visitors accounted for 2.74 million arrivals while 259,277 were returning overseas Filipinos.

According to the DoT, South Korea accounted for 741,658 visitors, followed by the US with 550,569. Other top source countries were Australia (146,062), Japan (143,227), and Canada (132,018).

Other leading sources of visitors were China (129,077), Taiwan (104,211), the UK

(85,847), Singapore (81,656), and Malaysia (54,411).

The 2023 international arrivals target of 4.8 million is significantly higher than the actual arrivals of 2.65 million posted in 2022 with the reopening of international travel.

"We are glad to report that in roughly seven months, we have hit the 3 million international visitor arrivals mark, reflecting continued robust recovery and the gains of the Marcos Administration towards the resurgence of Philippine tourism," Tourism Secretary Maria Esperanza Christina G. Frasco said.

The DoT estimates receipts from inbound tourism in the first half of P212.47 billion, up 502.02% from a year earlier. — **Revin Mikhael D. Ochave**

## Maharlika expected to struggle in attracting talent

THE newly approved Maharlika Investment Fund (MIF) will likely struggle to attract talent from the private sector, a former central bank governor said.

"It's going to be difficult to get people from the private sector to work in government, when they know that there are so many limitations," former Bangko Sentral ng Pilipinas (BSP) Governor Jose Cuisia, Jr. told OneNews Channel.

President Ferdinand R. Marcos, Jr. signed into law the MIF bill on Tuesday, creating a sovereign wealth fund that will issue P500 billion worth of preferred and common shares to the National Government (NG), state-run corporations, and financial institutions.

The Maharlika Investment Corp., which will control the fund, will have a board of nine members, including the Secretary of Finance.

It will also include the presidents of the Land Bank of the Philippines (LANDBANK) and the Development Bank of the Philippines (DBP), two regular directors, and three independent directors from the private sector.

Mr. Cuisia also cited the controversy surrounding other sovereign wealth funds such as Malaysia Development Bhd., which has been under scrutiny since 2015 over suspicious transactions.

"I don't blame the Senate if they say, 'Well, we need to put all of these safeguards.' Look at what happened in Malaysia, the IMDB fund," Mr. Cuisia said. "I wouldn't want to be in that situation, in other words, if they ask me, 'Can you come in and be the one of the invest?' I would politely decline."

"It's going to be tough getting the right people," he said, "but that's important — getting the right kind of people for the Maharlika fund."

The Philippines ranked 166<sup>th</sup> out of 180 countries in the 2022 Corruption Perceptions Index prepared by Transparency International.

After the legislation was signed on Tuesday, opponents who organized into an alliance known as the Taumbayan Ayaw sa Maharlika



BW FILE PHOTO

Fund Network (Citizens Opposed to Maharlika Network) raised concerns about the plunder of public funds or investments being directed to favored corporations.

Leonardo A. Lanzona, an economics professor at the Ateneo de Manila, said the wealth fund is creating a "large pool of money," placing the MIF in a "domestic monopoly" position.

He cited the coconut levy from the days of the first President Marcos, which collected funds from coconut farmers to develop the industry. Instead, the money was diverted by associates of the senior Mr. Marcos, who built private business empires that took decades to unwind, with the proceeds eventually returned to the government only recently.

A 2012 Supreme Court ruling recognized the government's ownership of the funds.

"All of these large government schemes open themselves up to corruption and elite capture," Mr. Lanzona said.

The P125 billion in initial funding for the MIF is to be sourced from LANDBANK (P50 billion), the DBP (P25 billion), and the National Government (NG) (P50 billion).

The NG's contribution will come from the dividends of the central bank, its share of the

earnings of the Philippine Amusement and Gaming Corp. (PAGCOR) and other government-owned gaming operators, income generated by regulators privatization proceeds and transfer of assets, and other sources such as royalties and special assessments.

Filomena Sta. Ana, coordinator of Action for Economic Reforms, said the administration's argument that the Maharlika fund will help reduce the debt burden is unfounded.

"In fact, Maharlika is diverting resources from government financial institutions, resources which could have been used for the government's development spending," he said via chat. "That contributes to the fiscal problem."

In his speech upon signing the bill, Mr. Marcos Jr. said the fund "will leverage a small fraction of the considerable but underutilized investible funds of the government and stimulate the economy without the disadvantage of having additional fiscal and debt burden."

"But these funds — say from LANDBANK or DBP or dividends from the BSP — are already investible without Maharlika," Mr. Sta. Ana said. "So Maharlika will be just grabbing these funds that otherwise can be used for existing development programs."

Public opposition to the measure was initially sparked by a previous version of the legislation proposing to generate seed money from the two major government pension funds — the Government Service and Insurance System (GSIS) and Social Security System (SSS).

The removal of the proposal requiring GSIS and SSS to invest in the Maharlika fund "should be considered a partial win for the public," Emy Ruth S. Gianan, who teaches economics at the Polytechnic University of the Philippines, said via chat.

"Moving forward, since it would be impossible to prevent Maharlika from getting implemented, we need to be vigilant," she said, "Of particular concern would be the person heading the agency in charge of MIF, as well as the implementation of its promised security/accountability measures." — **Kyle Aristophere T. Atienza**

## Gov't land inventory ordered to identify likely sites for 'flagship' housing program

THE PRESIDENT has ordered government agencies to identify "suitable land" to host housing projects to be built under a flagship program known as Pambansang Pabahay Para sa Pilipino (4PH).

In Executive Order (EO) No. 34, President Ferdinand R. Marcos, Jr. declared the Department of Human Settlements and Urban Development's (DHSUD) 4PH a "flagship program" of the government, noting that the housing backlog hit 6.8 million units in 2022.

The order was signed for the President by Executive Secretary Lucas P. Bersamin on July 17 and released on July 19.

The President ordered government agencies and instrumentalities, including government-owned or -controlled corporations (GOCCs), and local government units (LGUs) to "conduct an inventory of the land that they own and administer" and submit the list to the housing department within 60 days of the EO's issuance.

The housing department, for its part, should identify what national and local government lands are suitable for housing projects such as housing and human settlements, including townships and estates development.

"The inventory of land shall include government-owned idle land or land that has not been used for the purpose for which

they have been originally reserved or set aside for at least 10 years, and on which no improvements have been made by the owner as certified by the concerned LGU," according to the order.

It said the DHSUD, through the Department of Environment and Natural Resources, should recommend to the President sites subject to proclamations "declaring said public land as alienable and disposable, and reserving the same for housing and human settlement purposes, subject to existing laws, rules and regulations."

Under the order, the Land Registration Authority (LRA), an arm of the Department of Justice, is tasked to assist agencies conducting inventories by providing a list of titles and the corresponding true copies.

The LRA has the power to cancel the titles of such land and reissue the titles under the name of the DSHUD.

The DSHUD "shall initiate the expropriation of lands when necessary," according to the order.

"All National Government agencies and instrumentalities, including GOCCs, are hereby directed, and all LGUs are hereby enjoined, to submit regular reports to the DHSUD on the status of the implementation of the Program and their compliance with this Order," according to the EO. — **Kyle Aristophere T. Atienza**

### OPINION

## In pursuit of a fair tax assessment process

FOR 2023, the Bureau of Internal Revenue (BIR) is tasked to collect a staggering P2.6 trillion in revenue. Given this high collection target, it is no surprise that revenue examiners have taken an aggressive approach in their investigations of taxpayers receiving Letters of Authority (LoA) and Assessment Notices for deficiency taxes one after another.

This is a sad reality most taxpayers currently face. But there is no need to despair — the courts have time and again emphasized the requirement for the BIR to properly comply with rules and regulations put in place for tax assessments.

### A MEMORANDUM OF ASSIGNMENT IS NOT AN LOA

Let's start off with the issuance of the LoA, which serves to notify the taxpayer of the tax audit that will be conducted. It is the concrete manifestation of the grant of authority by the Commissioner of Internal Revenue (CIR) or his authorized representatives to the revenue officers assigned to do the audit. The Court of Tax Appeals (CTA) and the Supreme Court have consistently ruled on the mandatory nature of the LoA; without it, the audit of the BIR would be null and void.

In practice, however, the BIR issues other documents to give revenue

officers the authority to examine the taxpayer's books. Among the notable 'other documents' is the Memorandum of Assignment (MoA) which could be issued in case of re-assignment of the case to a new set of examiners.

It must be mentioned, though, that in a recent decision of the CTA sitting En Banc (CTA EB No. 2536 dated July 4, 2023), the Court again distinguished the MoA from the LoA. In the case, the BIR argued that the MoA issued by the Revenue District Officer (RDO) authorizing another revenue officer to continue the tax examination is allowed in case of reassignment of the revenue officer originally named in the LoA.

The CTA EB disagreed with the BIR's position. It restated that reassigning cases to new revenue officers by a mere MoA, Referral Memorandum or other similar documents which are typically signed only by the RDO and not by the CIR or his duly authorized representative (e.g., Regional Director, Deputy Commissioners, Assistant Commissioner), and not through a separate LoA is, in effect, a usurpation of the statutory power of the CIR or his duly authorized representative. Thus, the issuance of the MoA and its subsequent use as authority for revenue officers to continue the tax examination is not proper.

The CTA EB reiterated that the absence of an LoA granting named revenue officials proper authority to conduct the examination renders the assessment invalid.

### ASSESSMENT NOTICES SHOULD BE PROPERLY SERVED

Also in a recent case (CTA EB No. 2564, dated July 3, 2023), the CTA EB reiterated that proper service of Assessment Notices by the BIR is critical. For guidance, the deficiency tax findings of the BIR are contained in formal documents such as the Notice of Discrepancy (NoD), Preliminary Assessment Notice (PAN), Final Assessment Notice (FAN) and Formal Decision on Disputed Assessment (FDDA). These are normally served via personal delivery. In cases where personal delivery is not practicable, the Notices may be delivered via substituted service or by mail.

If the taxpayer or its authorized representative is not found at the registered address, the rules require the revenue officer to bring a barangay official and two disinterested witnesses to such address so that they may personally attest to the absence of the taxpayer or his authorized representative. The Notice shall then be given to the barangay official.

In that case, the court agreed that there was no valid substituted service of the FAN when it was simply left with the building security personnel. The CTA

also articulated that when a taxpayer denies receipt of the Assessment Notice, it is incumbent upon the BIR to prove by competent evidence that the taxpayer actually received the same.

The CTA EB deemed the deficiency taxes per FAN void considering the invalidly issued FAN.

### FAN REQUIREMENTS

In that same case, the court further invalidated the FAN, noting that the BIR failed to demand payment of the taxes due within a specific period.

The CTA EB stressed that the FAN must not only indicate the legal and factual bases of the assessment but must also state a clear and categorical demand for payment of the computed tax liabilities within a specific period. Absent such demand, the FAN is fatally infirm and being a void assessment, the FAN bears no fruit.

### SUBMITTING THE APPEAL AGAINST THE FDDA

An important note to taxpayers is that the BIR recently issued Revenue Memorandum Circular No. 43-2023 which requires that within five days from the filing of the appeal to the FDDA (either to the Office of the CIR or to the CTA), taxpayers shall furnish a copy of the appeal to the:

a. Chief of the Assessment Division for tax cases under the jurisdiction of the regional office; and

b. Head Revenue Executive Assistant (HREA) for tax cases under the jurisdiction of the Large Taxpayers Service or those investigated by the National Investigation Division under the Enforcement and Advocacy Service.

While the failure to provide a copy of the appeal to the Assessment Chief or HREA should not be a grounds for denying the appeal, it is essential to comply in order to avoid the improper issuance by the BIR of a Warrant of Distraint or Levy.

As taxpayers, we know that it is imperative that we strictly observe the rules or else risk the deficiency tax assessment becoming final and executory. So, it gives us a sense of calm and satisfaction knowing that the Courts impose equal responsibility upon the BIR to adhere to the rules. Otherwise, it puts the validity of the assessment on the line.

*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.*



MARIA JONAS YAP is a director at the Tax Services department of Isla Lipana & Co., the Philippine member firm of the PwC network. +63 (2)8845-2728 maria.jonas.yap@pwc.com