Cooperatives call for amendments to clarify tax exemption rules

THE Cooperative Code of the Philippines needs to be amended to clarify the industry's tax-exempt status, the Philippine Chamber of Cooperative, Inc. (Co-op Chamber) said.

"The law was put up 15 years ago and the basis was the economic situation of the Philippines then. It is now time for it to be amended," Co-op Chamber Board Member Alexander B. Raquero said at the launch of the chamber on Wednesday.

Established on July 24, the chamber seeks to lobby for regulation that will help cooperative enterprises thrive and help its members achieve their business goals.

"The Co-op Chamber wants to institute some of these amendments specifically on tax exemptions. We would like to pursue, maintain and sustain that ... because we are the only one (serving) the unbanked groups in the countryside and even in the cities," Mr. Raquero said.

Under the Philippine Cooperative Code of 2008, registered cooperatives which do not transact with non-cooperative members or the general public are not subject to tax.

"We want the law to be simplified and clarified because it is still open to interpretation. That is why most cooperatives right now are being audited by the Bureau of Internal Revenue (BIR) and some are even taxed," Mr. Raquero said.

"The law states that as long as we transact with our members, we are tax-exempt... but we are still subjected to very specific taxes," he added.

He said cooperatives want the law to be simplified along the lines of the exemptions for religious groups, which are not made to meet the same kind of conditions before being deemed eligible.

"The Philippine Constitution says that religious groups are tax-exempt without requiring them to pass anything. For cooperatives, there are a lot of requirements. Before we are recognized as tax-exempt, we need to submit papers to the BIR which will then issue us a certificate of tax exemption," he added.

Mr. Raquero said that cooperatives want transactions with non-members to also be tax-exempt.

He added that the lending assistance to the industry needs to expand, saying that cooperatives can play a role in achieving food security. — **Justine Irish D. Tabile**

Coal power phaseout by 2035, gas by 2040 deemed feasible

THE PHILIPPINES has the capacity to abandon coal-fired power by 2035 and most power generated by gas by 2040, a climate advocacy said in a report.

"The Philippines must urgently phase out coal-fired power by 2035, and almost entirely phase out gas-fired generation by 2040. This report finds this is not only feasible but will benefit the economy and provide more than a million jobs by 2050," Berlin-based Climate Analytics said in the report, which was released on Wednesday.

"To align with international climate goals, the Philippines should prioritize achieving a higher share of renewable electricity generation by 2030, exceeding current plans," it added.

The government target is to increase the share of renewable energy (RE) in the power mix — currently at 22% — to 35% by 2030 and 50% by 2040.

The report said that it is "entirely feasible" to get the power industry onto a Paris agreement-compliant pathway by bringing forward the replacement of fossil fuels with RE.

The Philippines is a signatory to the Paris agreement, a treaty whose participants committed to take action that will keep the rise in global temperatures below 2°C.

"We find that with the right international funding and policies in place, the Philippines could transition its' power sector to near-100% renewable energy without compromising on the cost of electricity, reducing its reliance on expensive imports of both coal and gas, and creating up to a million jobs by 2050," according to Nandini Das, an analyst with Climate Analytics and project lead for the report.

In order to achieve the 1.5°C target for temperature rise, the Philippines needs a "well-defined plan" for an expedited coal phase-out and expanding renewable energy to 99% coverage by 2050.

"Policymakers must outline a clear phase-out plan, which can incentivize power plant operators to exit their power supply contracts, expedite the decommissioning process and swap to renewables," the report said.

In 2020, the Department of Energy (DoE) issued a moratorium on greenfield coal-fired power plants, signaling a shift to a more flexible power mix.

As of July, the Philippines had coal-fired installed capacity of 12,472 megawatts (MW), the DoE reported.

"The Philippines has abundant renewables potential, estimated at around 1,200 GW (gigawatts), composed of solar rooftop, open-field solar and onshore and offshore wind energy," according to the report.

Climate Analytics projected that the Philippines needs an additional 152 terawatt-hours by 2050 to meet future electricity demand, assuming the phaseout of fossil fuels.

"Our analysis underscores that the Philippines possesses substantial renewable energy potential, particularly in rooftop and open-field solar photovoltaics," it said.

Philippines solar energy resources have been estimated at a potential 58,110 MW, according to the DoE.

As of June, the DoE awarded 341 solar service contracts with a potential capacity of 14,786 megawatt peak.

Overall, 1,087 RE contracts have been rewarded with an equivalent total potential capacity of 113.5 GW. — **Sheldeen Joy Talavera**

Meat imports drop 9.7% in 10 months to October

IMPORTS of meat declined 9.7% year on year in the 10 months to October, with shipments of beef, pork, buffalo, and turkey dropping, according to the Bureau of Animal Industry (BAI).

The BAI said imports amounted to 1.02 billion kilograms (kg) during the period.

October imports totaled 95.98 million kg, down from 105.81 million kg in September and 118.45 million kg a year earlier.

Brazil was the top supplier, accounting for 343.86 million kg. This was followed by the US and Spain with 179.64 million kg and 123.36 million kg, respectively.

Pork accounted for 504.31 million kg or 49.5% of the total over the first ten months. Pork shipments fell 15.9% year on year.

Spain remained the top supplier of pork with 121.77 million kg, followed by Brazil with 92.12 million kg and Canada with 92.09 million kg.

Imports of beef fell 22.1% to 120.64 million kg for the period, or 11.8% of meat shipments.

The top supplier was Brazil with 46.58 million kg, followed by Australia with 34.44 million kg and Ireland 13.11 million kg.

Buffalo meat shipments fell 13.8% to 33.65 million kg, accounting for about 3% of total imports.

Shipments of turkey declined 4.9% to 391,630 kg.

The BAI also reported that imports of chicken, duck, and lamb rose during the period.

Chicken imports were up 4.3% from a year earlier to 359.23 million kg, or 35.3% of total imports.

The primary source for chicken was Brazil with 205.13 million kg, while the US supplied 130.5 million kg and Canada 11.87 million kg.

Duck imports totaled 252,783 kg, while lamb totaled 669,030 kg. — **Adrian H. Halili**

PHILIPPINE STAR/WALTER BOLLOZOS

APEC: US chipmakers pitched on wafer fab investments in PHL

TRADE Secretary Alfredo E. Pascual said he invited US chipmakers to set up wafer fabrication plants in the Philippines.

Speaking before a roundtable session at the Asia-Pacific Economic Cooperation (APEC) Summit 2023, Mr. Pascual said: "Within the semiconductor sector, the US, particularly through partnerships and support from the Semiconductor Industry Association (SIA) and the Semiconductor Equipment and Materials International (SEMI), stands out as a pivotal ally."

He said in an online briefing that he touted the Philippines' advantages, which include strong economic growth, pool of young talent competitive business environment, strategic market access, and robust government support.

"We made a presentation to them and highlighted the fact that the Philippines is already very active on the back end of the semiconductor value chain because a lot of outsourced semiconductor assembly and testing (OSAT) is happening in the Philippines," Mr. Pascual said at the online media briefing on Wednesday.

He added that on the front end, the country is also seeing an increase in the number of companies engaged in integrated circuit (IC) design.

However, despite the projected growth in OSAT and IC design industries, he said that the Philippines is still missing processes like wafer fabrication, where the facilities are known in the industry as fabs.

"In between is what is called the wafer fabrication that we don't have yet in the Philippines. Taiwan semiconductor manufacturing companies supply a large share of the wafers sold globally," he said.

Mr. Pascual said Philippine ambitions to enter fab industry have grown as the industry strives to avoid potential disruptions to the wafer supply originating from Taiwan.

"There are factories going up in the US and Singapore. Given that situation, we might start a wafer fabrication (hub) on a sort of pilot basis to be able to demonstrate that we can do it and to be able to complete the (semiconductor) value chain," he said.

"But we will continue to work on attracting more investments on the OSAT side of the business as this is where we have established a strong track record," he added.

Mr. Pascual said the Department of Trade and Industry is still identifying potential partners for wafer fabs, which may include smaller Taiwan producers.

"We are still identifying potential partners. We found out that there are other smaller players in Taiwan that we can tap. Right now, wafer fabrication operations are mainly in Taiwan," he said.

"There are smaller producers in Taiwan that we might try to access and see to what extent we can partner with them, without giving up on the possibility of a major investment that might involve the bigger producers," he added. — **Justine Irish D. Tabile**

OPINION

Preparing for Transfer Pricing Audits

TAXWISE OR OTHERWISE

EMMANUEL JIME FERNANDEZ

On Nov. 8, the Philippines confirmed its commitment to protect the tax base from aggressive tax avoidance schemes, and promote international tax cooperation, by joining the Organisation for Economic Cooperation and Development/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS). The mandate of the Framework is to effectively implement the BEPS Project, which is a coordinated response to the aggressive tax planning employed by multinational enterprises that leads to erosion of the tax base or shifting of profits from higher-tax to lower/no-tax locations.

Early this year, the Commissioner of Internal Revenue (CIR) estimated that the government was missing out on billions of pesos in foregone revenue from international transactions. To address this issue, the CIR announced that the Bureau of Internal Revenue (BIR) is looking to create a separate unit that will focus on international tax collection, and look into the issue of transfer pricing (TP) and BEPS.

Since the release of Revenue Audit Memorandum Order (RAMO) No. 1-2019 or the Philippine TP Audit Guidelines, the BIR has been steadily laying the groundwork to strengthen its TP initiatives. One of the key policies implemented by the BIR was the requirement for qualified entities to submit BIR Form No. 1709 or the Information Return on Transactions with Related Party (RPT Form), which allows the BIR to conduct initial TP risk assessments, identify high-risk taxpayers, and determine whether or not to conduct a thorough TP review or audit of a particular entity or transaction.

That said, while an RPT Form may put certain taxpayers at higher risk for a TP audit, those who do not file RPT Forms are not immune. Since a TP audit is part of the general tax audit, it must be emphasized that TP audits may be initiated as long as there are related party transactions (RPT) involved, whether or not a taxpayer has filed or is required to file an RPT Form.

When subject to a TP audit, taxpayers must be able to present sufficient proof that its RPTs were conducted at arm's length terms (i.e., made under comparable conditions and circumstances as a transaction with an independent party), and were not undertaken to evade taxes or to inaccurately reflect income. Failure to do so may allow the BIR to make adjustments to the reported income/expenses of the concerned taxpayer, resulting in additional tax liabilities and administrative penalties, which can easily amount to millions or even billions of pesos.

Preparation, therefore, is crucial for entities who engage or intend to engage in RPTs regardless if required to prepare an RPT Form or not, in order to minimize potential tax liabilities from TP audits.

To enhance TP audit preparedness, taxpayers may consider adopting a two-pronged strategy: (1) Ensure proper application of the arm's length principle; and (2) maintain adequate documentation demonstrating such proper application.

ENSURE PROPER APPLICATION OF THE ARM'S LENGTH PRINCIPLE

Ideally, prior to entering into a related party transaction, taxpayers should understand and take into consideration the concepts of comparability analysis, tested party and transfer pricing methods, and the arm's length price/results.

At this stage, taxpayers should also define the objectives and rationale for the transaction, the role and characterization of each party to the transaction, determine the availability and quality of comparable information, and select the most appropriate TP method to compute the arm's length price or set the TP policy, among others.

If these analyses cannot be made prior to concluding an RPT, testing the compliance to the arm's length principle post-transaction would be an advisable alternative, as this would assist taxpayers in determining whether adjustments to the adopted TP policy are necessary.

MAINTAINING ADEQUATE ARM'S LENGTH DOCUMENTATION

The burden of proof for demonstrating compliance with the tax rules and payment of the correct tax obligations during a TP audit rests with the taxpayer. Thus, failure to keep adequate documentation of RPTs will not only be detrimental for compliance purposes, but will also make defending TP arrangements difficult in case of a TP audit.

The following are some of the documents expected to be maintained by taxpayers, in accordance with existing TP regulations:

1. RPT Form or BIR Form No. 1709, if applicable
2. Transfer Pricing Documentation, if applicable
3. Certified true copy of the relevant contracts and/or proof of transaction/s
4. Withholding tax returns and the corresponding proof of payment of taxes withheld and remitted to the BIR
5. Proof of payment of foreign taxes or ruling duly issued by the foreign tax authority where the other party is a resident
6. Certified true copy of Advance Pricing Agreement, if any
7. RAMO No. 1-2019 Annexes (i.e., Related Party Transaction, Segmented FS, Supply Chain Management Analysis, Functions, Assets, and Risks Analysis, Characteristics of Business, Comparability Analysis)
8. Audited Financial Statements with related disclosure on whether or not the entity is required to file an RPT Form and prepare TP Documentation
9. Other documents that may provide data for assessing RPTs, such as global/group pricing policy document, organizational/group structure, tax treaty relief applications/rulings or request for confirmation with the BIR, and annual ITR.

If deemed necessary, additional documents may also be requested by the tax examiners during a TP audit. This is especially true for high-risk RPTs such as business restructuring, provision of intra-group services, transactions involving intangible assets and interest payments, and cost contribution arrangements.

Other factors, such as potential applicability of a tax treaty, transactions with entities located in countries or economic zones with low or zero tax rates, having lower net operating profit compared to companies in the same industry, and recording losses over several years, among others, may also trigger a more thorough review of a taxpayer's RPT.

With the Philippines joining the Inclusive Framework on BEPS and assuming the Chairmanship of the Intergovernmental Group of Twenty-Four (G24) this year, it is only a matter of time before TP issues become a common finding during regular tax audits. For the BIR, this may mean creation of additional sources of revenue, while for taxpayers, this may signal a call for the adoption of a more robust TP practice that can withstand the scrutiny of an audit. As the old saying goes, "the best preparation for tomorrow is doing your best today."

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.

EMMANUEL JIME FERNANDEZ is an assistant manager at the Tax Services department of Isla Lipana & Co., the Philippine member firm of PricewaterhouseCoopers global network.
emmanuel.jime.fernandez@pwc.com