Cancer, diabetes, hypertension, TB drugs added to BIR's VAT-exempt list

THE Bureau of Internal Revenue (BIR) said it updated the list of drugs exempt from value-added tax (VAT) to include treatments for cancer, diabetes, and hypertension.

In a memorandum circular, the BIR said other such medicines treat kidney disease, mental illness and tuberculosis (TB), as classified by the Food and Drug Administration (FDA).

The update also features the removal of one hypertension drug from the list.

According to the circular, two medicines for cancer were added to the VAT-exempt list — Panitumumab and Fulvestrant.

It also added five diabetes medicines: Teneligliptin (as hydrobromide hydrate), Sitagliptin (as phosphate monohydrate) + Metformin Hydrochloride; Sitagliptin (50mg); Sitagliptin (100mg); and Metformin Hydrochloride.

It also included Atorvastatin Calcium and Atorvastatin + Fenofibrate, which are medicines for high cholesterol.

Also joining the VAT-exempt list are the hypertension drugs Clonidine hydrochloride in solution for injection and in tablet form; as well as Lisinopril as dihydrate in 5mg, 10mg, and 20mg tablets.

Medicines for kidney disease included Mannitol; Tolvaptan in 15mg and 30mg tablets; and Alpha Ketoanalogues + Essential Amino Acids.

It also added one medicine for mental illness, Desvenlafaxine (as succinate monohydrate) and two for tuberculosis, Bedaquiline (as Fumarate) and Isoniazid + Pyridoxine Hydrochloride.

Meanwhile, it removed from the VAT-exempt list Macitentan, a hypertension treatment.

The updated list will take effect upon the issuance of a FDA advisory, the BIR added. — **Luisa Maria Jacinta C. Jocson**

Projects granted green-lane certificates valued at P1.2T

THE Board of Investments (BoI) said on Monday that 36 projects have been approved for green lane services since the passage of the Executive Order (EO) No. 18 in February, with the projects valued at a combined P1.2 trillion.

The BoI said 23 projects worth P498.91 billion were approved last year, while the remaining P697.98 billion were approved this year.

The list includes the P22-billion floating solar project of Fuego Renewable Energy Corp. (FREC) in Nueva Ecija.

"This is the fourth green lane certificate in our portfolio, and we have experienced responsiveness from government agencies and institutions in our various permitting needs," FREC President Aristotle Natividad said in a statement.

"With this latest green lane endorsement, we expect to achieve the same results and materialize our project at the soonest," he added.

According to the investment promotion agency, FREC is set to build the Pantabangan Floating Solar Power Plant which is a 464-megawatt alternating current (MWac) floating solar photovoltaic project.

Its other three projects that were endorsed for green lane services are the 137.48-MWac Ubay Power Plant under Ubay Solar Corp., the 175.29-MWac Barotac Viejo Solar Power Project under Magallanes Solar Energy Corp., and the 59.84-MWac Gamu Solar Power Plant under Intramuros Solar Energy Corp.

FREC's recently-endorsed project which will rise on the surface of Pantabangan Lake is scheduled for commissioning in 2025, with its energy output contracted for export to the National Grid.

"Notably, the project site is located within the Pantabangan-Carranglan Watershed Forest Reserve. The location of the transmission lines and other facilities onshore will fall under the protected area or watershed classification," the BoI said.

The project is expected to generate 2,000 temporary and permanent direct jobs in its construction, commissioning, operations and maintenance.

EO 18, approved on Feb. 24, established green lanes within government agencies which will expedite the process of granting permits and licenses through the One-Stop Action Center for Strategic Investments (OSACSI).

OSACSI issues endorsement letters to the Department of Energy, National Government agencies, and local government units, which designate projects as strategic, which will in turn ensure processing times fall within the periods prescribed in EO 18. — **Justine Irish D. Tabile**

PEZA in agreement to promote IP protections in economic zones

THE Intellectual Property Office of the Philippines (IPOPHL) said it signed a deal with the Philippine Economic Zone Authority (PEZA) to draft plans for promoting intellectual property (IP) protection to investors in the special economic zones (SEZs).

In a statement, IPOPHL said that the memorandum of understanding it signed with PEZA will help ensure IP is respected especially in the innovative activities performed within SEZs.

"By underlining the importance of protecting and enforcing IP rights in these areas, current and potential companies and investors can do business in the Philippines knowing their IP assets are in safe hands," IPOPHL Director General Rowel S. Barba said.

Under the partnership, the two parties plan to incorporate IP into the investment promotion agency's goals by training its officials and staff.

"(This MoU) can simplify our procedures to make it easy for our locators — those particularly applying for patents and trademarks. From our end, we would also look into inputs from our investors," PEZA Director General Tereso O. Panga said.

PEZA estimates actual direct exports from ecozones of $54.24 billion as of October. It added that locators directly employ 1.85 million workers.

In 2023, PEZA booked P175.71 billion worth of investments across 233 approved projects.

It currently oversees 422 economic zones hosting 4,352 locators.

According to IPOPHL, the Philippines remains an attractive investment destination since its exclusion from the European Commission's IP watchlist in 2020 and the US Trade Representative's Special 301 Report in 2013.

"We want to boost the confidence of foreign direct investors where PEZA is a key player. As such, our goal here is to assure investors that the Philippines is a suitable and secure destination with a strong IP system where investments are protected," Mr. Barba said. — **Justine Irish D. Tabile**

Small-bank MSME loans counted as reserves estimated at P6.7B

SMALL BANKS lent around P6.71 billion to micro, small, and medium enterprises (MSMEs) as of November, with the loans counting as an alternative form of compliance with reserve requirements, the Bangko Sentral ng Pilipinas (BSP) said.

The BSP in a report said other segments of the industry, like rural and cooperative banks, designated P12.4 million in such loans as compliance with the reserve requirements.

"Banks' availment of the BSP's relief measure on the use of new or refinanced loans to MSMEs and eligible large enterprises as alternative compliance with the reserve requirements (RR) declined," the central bank said.

"This is in view of the lapse of the temporary relief measure on alternative RR compliance, particularly for U/KBs (universal and commercial banks) effective 01 July 2023," it said.

During the coronavirus pandemic, the central bank allowed banks to count their loans to MSMEs and pandemic-hit large enterprises as part of their compliance with reserve requirements.

The relief measure expired last year, but small lenders can still count their loans to MSMEs and LEs as alternative compliance with reserve requirements until they are fully paid, but not later than Dec. 31, 2025.

In 2022, banks lent P493.5 billion to MSMEs as alternative compliance. This was 6.6% higher than the P463.1 billion a year prior.

Universal and commercial banks extended P390.9 billion in loans to MSMEs, while rural and cooperative banks lent P52.7 billion. — **Keisha B. Ta-asan**

OPINION

How BEPS Pillar 2 impacts taxation of Philippine entities of MNEs

LET'S TALK TAX
SHEENA MARIE DAÑO

Technology is making the world smaller. More countries are linked and interconnected in trade relations, particularly in digital trade, which the Organisation for Economic Co-operation and Development (OECD) Global Trade Forum highlighted would continue to grow, representing around 25% of total trade as of 2020. Likewise, the World Trade Statistical Review reported that digitally delivered services traded within Asia accounted for 43.2% of the continent's total trade in 2021.

UNDERSTANDING THE FUNDAMENTALS OF BEPS

A global initiative, led by the OECD and the G20 countries, was formed in 2015 to address base erosion and profit shifting (BEPS). As defined by the OECD guidelines, BEPS refers to tax planning strategies used by multinational enterprises (MNEs) that potentially take advantage of gaps and mismatches in differing tax rules across countries, resulting in tax avoidance where tax bases are eroded through deductible disbursements or where profits are artificially shifted to low or zero-tax jurisdictions with little or no economic activity.

With the rise of digitalization in the economy, the BEPS framework has continuously evolved to address the corresponding rise of global tax challenges through the development of a two-pillar approach that aims to create coherence and transparency in the application of international tax rules.

In 2021, the two-pillar approach, known as BEPS 2.0, was created as an update to the BEPS framework, which focuses on ensuring that profits are taxed where economic activities take place and value is created, upholding fairer and more equitable taxing rights across countries.

Based on OECD guidelines, Pillar 1 has two main components: Amount A and Amount B. Amount A relates to the reallocation of portions of profits of the related parties of a MNE group, more than an agreed baseline, to market jurisdictions where the MNE group has customers, regardless of the taxable presence in that jurisdiction. Amount B, on the other hand, relates to the setting of a standardized basis of renumeration, aligned with the arm's length principle, for in-country baseline marketing and distribution activities performed by related party distributors for the respective MNE group.

Pillar 2, similarly, has two main components: the global anti-base erosion (GloBE) rules and the subject-to-tax rule (STTR). GloBE rules refer to the imposition of a global minimum tax of 15% on the income arising from each jurisdiction where the MNE group operates. STTR, on the other hand, refers to the imposition of a globally agreed minimum tax rate of 9% on certain related party payments, such as interest and royalties of an MNE group, under agreed tax treaty benefits.

Between the two pillars, Pillar 2 is in the process of being implemented by a number of countries. Under the GloBE rules, the OECD has recommended that the income inclusion rule (IIR) and qualified domestic minimum top-up tax (QDMTT) become effective in 2024, while the undertaxed profits rule (UTPR) becomes effective in 2025. Meanwhile, STTR, being a treaty-based rule, can only be implemented through bilateral negotiations and amendments to individual tax treaties or as part of a multilateral convention.

UNDERSTANDING THE FUNDAMENTALS OF PILLAR 2

Following OECD guidelines, MNEs with consolidated group revenue exceeding €750 million (approximately P45 billion) in at least two out of the last four years are required to pay a top-up tax on excess profits in any jurisdiction in which the effective tax rate (ETR) for the jurisdiction is below a 15% minimum rate. Collectively, such entities are called in-scope MNEs. Government entities, international organizations, non-profit organizations, and entities operating in pension, investment, real estate fund, and international shipping activities of MNEs are excluded from the coverage for Pillar 2.

Applying the GloBE rules, the IIR will impose an additional tax on the ultimate parent company of an in-scope MNE group when a foreign subsidiary of an in-scope MNE group is effectively taxed at a rate lower than 15%. In cases where the ultimate parent of an in-scope MNE group is in a jurisdiction that has not yet implemented Pillar 2, the UTPR is applied, which allocates the right to impose a top-up tax from the ultimate parent to the subsidiaries of an in-scope MNE group, located in different jurisdictions that have implemented Pillar 2.

QDMTT, consequently, impacts where the top-up tax is to be paid, as it allows any top-up tax from Pillar 2 to be collected in the domestic jurisdiction of the subsidiary, whose income tax rate is lower than 15%, rather than another entity of an in-scope MNE group in a foreign jurisdiction.

STTR, on the other hand, is a tax treaty provision to be added in certain double-taxation treaty countries that allows the payor, known as the Source State, to recapture some of the taxing rights on outbound related party income payments, where the income is taxed under the payee, known as the Residence State, at a rate less than 9%. The covered income of STTR includes income payments pertaining to business profits, interest, royalties, and other income, excluding income from international shipping and air transport.

THE PHILIPPINE IMPACT OF PILLAR 2

The Philippines has yet to adopt the OECD guidelines for Pillar 2. On November 2023, it nevertheless took a major step in joining the OECD/G20 Inclusive Framework on BEPS with its current 145 member countries, affirming BEPS actions in addressing the challenges posed by the digital economy.

Several countries have begun enacting laws to implement Pillar 2 beginning in 2024. Per the Philippine Statics Authority, four of the top trading partners of the Philippines — Japan, South Korea, the Netherlands, and Germany — have enforced laws effective 2024 and 2025, while others, such as Hong Kong, Singapore, and Thailand, have draft legislation in place.

Philippine entities of in-scope MNEs are either subject to the regular corporate income tax of 20% or 25%, depending on the level of net taxable income and total assets, or to the preferential income tax rates such as the income tax holiday or the 5% gross income tax. As such, under the GloBE rules, those subject to preferential income tax rates may lead to the lowering of the ETR of an in-scope MNE group. Since most of the ultimate parent companies of in-scope MNEs are located outside the Philippines, the collection of the top-up tax will be effectively earned by foreign tax jurisdictions. This means that the tax savings arising from the lower income tax rate of a subsidiary in the Philippines of an in-scope MNE group will be offset by the top-up tax, which will be paid by the ultimate parent company, located in a foreign tax jurisdiction. Further, for the Philippines to benefit from the GloBE rules, implementing the QDMTT, which allows the domestic tax authority to collect the top-up tax, will be an advantage to the BIR but will effectively offset any income tax benefits granted by existing domestic tax rules such as the CREATE Act.

Under the STTR, interest and royalties are often subject to withholding tax rates that are above 9%. For instance, under the Japan-Philippine tax treaty, income payments for interest are subject to 10%, while royalties are subject to 10% or 15%. As such, STTR might not be as widely applicable for income payments between related parties in an in-scope MNE group where the Philippines is the Source State.

Clearly, if the Philippines implements Pillar 2 in the coming years, there is a need to rethink the current Philippine tax laws to balance the inflow of foreign investments in the Philippines with the tax implications of Pillar 2. As of 2024, the Board of Investments targets foreign investment approvals of around P1.3 trillion to P1.5 trillion, after achieving a target of roughly P1.2 trillion in 2023. To continue the momentum of achieving the target year on year, with an annual increase of 10%, creating well-thought-out domestic tax rules that maximize tax collection under Pillar 2 while boosting the attractiveness of the Philippines as a viable investment destination can be challenging for various stakeholders.

Considerations such as the following, as laid out in OECD reports, might need a systematic, comprehensive analysis in localizing the implementation of Pillar 2 in the Philippines:

- Differences in the revenue and expense recognition following the accounting and tax rules of different jurisdictions of in-scope MNEs in computing the GloBE income (e.g., timing and permanent differences)
- Treatment of deferred tax arising from timing differences of in-scope MNEs, as part of covered taxes in computing ETR
- Identification and quantification of non-arm's length transactions within the in-scope MNEs
- Capturing of the taxable profits from digital economies, including the recognition of intangible assets as profit drivers in highly digitalized businesses
- Application of tax credits to reduce the tax liabilities arising from top-up tax on in-scope MNEs
- Availability of information, skills, and other resources in complying with the required income calculations and compliance filings
- Identification of the proper tax authority in auditing the top-up tax calculations of in-scope MNEs

Truly, the Philippine entities of in-scope MNEs are at the crossroads of the impact of Pillar 2, paving new interpretations to the current tax rules and new revenue sources for tax collection.

Let's Talk TP is an offshoot of Let's Talk Tax, 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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