US mineral tie-ups seen reducing PHL reliance on exporting to China

By John Victor D. Ordoñez
Reporter

COLLABORATION with the US in mineral processing and energy security projects will likely reduce the Philippines' dependence on exporting various ores to China, analysts said.

"There are political considerations for this new move by the US," Minimal Government Thinkers founder Bienvenido S. Oplas, Jr. said in a Viber message.

"It would reduce Philippine dependence on China ore exports and in the process pivot the Philippines away from China."

Washington is interested in partnering to set up projects to boost the Philippines' processing of nickel, cobalt and copper, State Department Undersecretary for Economic Growth, Energy, and Environment Jose W. Fernandez said at a briefing during his visit to Manila last week.

According to research group Observatory of Economic Complexity, the Philippines exported about $1.4 billion (P78.63 billion) in nickel ore to China in 2021, making it the top export destination for the mineral that year.

Mr. Fernandez has said that high energy costs are keeping miners and semiconductor companies from investing in the Philippines. He added that the Philippines must incentivize potential operators of wind and solar energy projects to attract more foreign investment in critical minerals.

The Philippines has potential offshore wind resources of 178 gigawatts, with large parts of the coast windy enough to power turbines, the Board of Investments has said.

Manila and Washington on Nov. 17 signed a deal that would allow Washington to export nuclear technology to Manila to help it develop civilian nuclear energy infrastructure.

That same month, the State Department said it will collaborate with the Philippines in exploring the expansion of the semiconductor industry in the context of the CHIPS Act of 2022, a US law that seeks to build US capability in developing and manufacturing semiconductors after years of offshoring these functions.

"The Philippines can reduce its energy costs via the early adoption of nuclear energy including the expansion of coal brownfield investment now that coal greenfield is banned," Mr. Oplas said.

The House of Representatives had approved a bill seeking to establish an agency that would regulate the nascent nuclear industry.

The Malampaya gas field, the country's only indigenous commercial source of natural gas, is expected to run out of easily recoverable gas using current techniques by 2027. The gas field accounts for about 20% of Luzon's electricity requirements.

The government is aiming to raise renewable energy's (RE) contribution to the energy mix to 35% by 2030 and to 50% by 2040. RE currently accounts for 22% of the energy mix.

As of October, the DoE has awarded at least 1,300 RE contracts with a total potential capacity of 130,880.8 megawatts.

"Broader economic relations and investments should be a pillar of the repivoting of the Philippines to the US," Terry L. Ridon, a public investment analyst and convenor of think tank InfraWatch PH, said in a messenger chat.

"The US can explore energy and mining investments in the Philippines, given the high cost of capital in these sectors, and the limitation of domestic capital to fund these endeavors."

BoI backs engineer training to support chip industry dev't

THE Board of Investments (BoI) said it will support programs to train 128,000 engineers and technicians over four years in support of chipmakers in the Philippines.

In a statement, the BoI said it will invest in semiconductor design training and is currently looking to invite investors to establish a lab-scale wafer fabrication plant.

"Utilizing a more generic technology for commercial and educational purposes, the wafer fab lab aims to train and upskill the workforce, while enabling the local industry to do prototyping and some tape outs of semiconductor chip designs in the country instead of bringing them all the way to Taiwan," the BoI said.

It added that it is already "finalizing" plans to train 128,000 engineers and technicians by 2028.

The BoI recently met with State Department Undersecretary for Economic Growth, Energy, and the Environment Jose Fernandez, who committed to facilitate Philippine access to the Minerals Security Partnership (MSP).

The MSP is a transnational association that aims to encourage investment in critical minerals supply chains globally. It is a collaboration of 13 countries and the European Union.

According to the BoI, the Philippines will be among the six countries the US will be supporting under the CHIPS Act as the US recognizes the potential of its semiconductor industry.

"The assistance will be focused mainly on assembly, testing, and packaging. In a proactive move, the US also announced that its International Development Finance Corp. will establish a more permanent presence in the Philippines by February," it added.

Aside from the Philippines, the US will be targeting participation in its CHIPS Act programs for Vietnam, Panama, Puerto Rico, and Mexico.

Under the CHIPS Act, a $500-million International Technology, Security, and Innovation Fund was earmarked to be spent over the next five years in the partner countries and territories.

"We welcome this strategic collaboration with the US in semiconductors and critical minerals. This partnership not only reinforces the Philippines' position as a key player in the global economy but also opens avenues for mutual growth and innovation," BoI Managing Head and Trade Undersecretary Ceferino S. Rodolfo said.

In terms of commodity groups, electronic products, which include semiconductors, remained the top Philippine export in 2023, accounting for $41.9 billion.

Specifically, semiconductors accounted for $33.67 billion of Philippine exports last year. — **Justine Irish D. Tabile**

NEDA: More researchers needed to meet innovation goals

THE National Economic and Development Authority (NEDA) said it will support the Philippines' innovation goals by advocating for scholarship programs to train researchers.

"We will be pushing for a massive scholarship program to help us reach our target of 500 researchers per million population by 2028," NEDA Undersecretary Rosemarie G. Edillon said.

Citing the Global Innovation Index, NEDA said that the Philippines had only 174 researchers per million population in 2018.

Under the National Innovation Agenda and Strategy Document, the government hopes to increase the number of researchers to 1,500 per million population by 2040.

It is also targeting to increase expenditure on research and development (R&D) to 1.8% of gross domestic product by 2040.

Ms. Edillon cited the need to increase the number of researchers and make R&D output more accessible to investors.

"We need to create a culture of innovation, where innovators are constantly looking for ways to improve products and services, and making consumers more willing to try innovative products and provide constructive feedback," she said.

"What's important right now is having a good knowledge management system for R&D output and having platforms that tell innovators where they can find the outputs they need to innovate," she added.

Under the national innovation strategy, the government is targeting to strengthen basic R&D and knowledge creation; advance market-driven and customer-centered R&D, scale up technology adoption, utilization, and commercialization; and accelerate innovation and entrepreneurship.

In a separate statement, NEDA announced it is also working with the US Agency for International Development (USAID) on the US-Philippines Partnership for Skills, Innovation, and Lifelong Learning (UPSKILL) program.

"The initiative aims to strengthen the Philippine higher education system for broad-based, inclusive growth. With $30 million funding from USAID, UPSKILL will run for five years," NEDA added. — **Luisa Maria Jacinta C. Jocson**

LANDBANK agri lending tops P755 billion in 2023

LAND BANK of the Philippines (LANDBANK) said it disbursed P755.11 billion in agricultural loans in 2023.

This represented 51% of the state-run lender's overall lending for the year, the bank said in a statement on Monday.

Loans to the agriculture and fisheries sectors by the end of the year represented a 23% rise from lending levels as of the third quarter.

"As LANDBANK's role in nation-building continues to expand, our commitment to advancing countryside development has remained steadfast. Through accessible financing and support interventions, we are empowering communities and enriching lives, while boosting the National Government's inclusive and sustainable development agenda," LANDBANK President and Chief Executive Officer Lynette V. Ortiz said.

Some P255.2 billion of the loans went to supporting rural infrastructure like public markets, highways, and transport systems, LANDBANK said.

Meanwhile, P186.3 billion financed sustainable projects for climate change mitigation and to promote responsible resource management.

"In support of agriculture and fisheries production, LANDBANK provided P118.1 billion for the processing of fisheries and agri-based products, and farm inputs," the bank added.

For projects modernizing farming practices and business processes, LANDBANK released P70 billion, while off-farm and fishery entrepreneurship programs received P61.6 billion.

The lender also disbursed P43.4 billion for projects promoting the health and wellness of agricultural workers and their beneficiaries.

"The rest of LANDBANK's AFRD financing covers various aspects of the agri value chain, including marketing, processing, distribution, shipping and logistics, storage of agricultural and fishery commodities, construction, acquisition and repair of facilities, agri-tourism, and agricultural mechanization, among others," LANDBANK said. — **Aaron Michael C. Sy**

Sugar farmers say imports not the way to address low prices at millgate

SUGAR planters said the plan to import more sugar is not an appropriate reaction to falling millgate prices.

"Even as we all agree on the need for timely and appropriate intervention at this time, we feel that your proposed trader program is inopportune," the Sugar Council said in a statement, addressing the industry regulator.

The council was responding to a proposal by the Sugar Regulatory Administration (SRA) to allow traders to import more sugar.

"We expressed clear, unequivocal objection to more sugar imports. It's not as if there are no better alternatives, because there are, and have been on the table since early this year," Aurelio Gerardo J. Valderrama, Jr., president of the Confederation of Sugar Producers Associations, Inc. (CONFED).

Farmers have said that millgate prices have dropped because of excessive imports and predatory pricing by traders.

"(This) puts in serious question any program that suggests even more trader intervention and import activity," it added.

The council is seeking updates on the government's intervention plan to address low millgate prices. — **Adrian H. Halili**

OPINION

The taxability of reimbursable or allocable expenses for cross-border services

LET'S TALK TAX
JUANITO RAFAEL CLEMENCE O. UY

Is there a flow of wealth when there is a reimbursement at cost? Is there an income to speak of when repaying a cost allocated by a related party? Are these kinds of transactions included in the definition of taxable income or VATable transactions in Philippine law? These are the common questions that taxpayers may ponder when they read the new Revenue Memorandum Circular (RMC) 05-2024 pertaining to reimbursable and allocable expenses.

In the recent RMC 5-2024, the Bureau of Internal Revenue (BIR) clarified the tax treatment of cross-border services in light of the Supreme Court's (SC) decision G.R. No. 226680 dated Aug. 30, 2022. The RMC provided a new framework for assessing the final withholding taxes and final withholding Value-Added Tax (VAT) on services rendered by non-resident foreign corporations (NRFC).

Specifically, the RMC states that cross-border reimbursements and allocated expenses are now taxable because of possible tax savings or benefits received from the transaction. The circular explained that these charges by a foreign corporation contribute to the value or benefit received by a local company. The reduction of expenses by the foreign company increases the foreign company's net income or profit because the foreign company spends less on its operations, resulting in additional funds that can be used for other purposes or retained as profit.

Therefore, the reduction in expenses is viewed as a form of income of the foreign company, and this increases the tax base that is subjected to Final Withholding Taxes (FWT) as well as the Final Withholding VAT. It is then of the greatest importance to understand the nature of reimbursable and allocable expenses to afford the proper tax treatment.

Reimbursement transactions happen when a related party procures goods or services from a third party on behalf of the taxpayer and is subsequently repaid by the taxpayer at cost. In some sense, it may be referred to as a pass-through cost because the related party was only an agent between the taxpayer and the third-party service provider and did not enhance the value of the acquired goods or services.

On the other hand, expenses may be allocated to the member companies of a group of companies through a cost-sharing or cost-pooling arrangement. In both cases, multinational companies merely reimburse or allocate business expenses among the affiliated companies at the same cost as those incurred. In this case, the foreign company is not spending less on its operations because these costs are liabilities of the local entity, even though the foreign company is legally or contractually liable to pay for the acquired goods or services that it seeks to reimburse or allocate to the local company.

Prior to the release of RMC 5-2024, reimbursements and allocation of expenses from foreign companies were not subject to any taxes because the nature of the transaction does not constitute any income that is subjected to income tax and, consequently, to final withholding tax.

Revenue Regulations No. 2 defines income as the wealth that flows into the taxpayer other than as a mere return of capital. It includes the forms of income specifically described as gains and profit, including gains derived from the sale of other dispositions of capital assets. Income cannot be determined merely by reckoning cash receipts.

In a SC decision, the SC held that receipts entrusted to a taxpayer that do not belong to it/him and do not redound to the taxpayer's benefit are not included in the term "gross receipts," and it is not necessary that there must be a law or regulation that would exempt such receipts. In this case, reimbursements are entrusted only to the foreign affiliate for the payment of expenses and do not constitute an increase in benefit that should be taxable.

Further, the Court of Appeals (CTA) in a decision states that "In order for the expenses not to be subject to withholding tax, it must first be established that they are reimbursements of actual expenses. In a reimbursement-at-cost transaction, it is inferred that the expenses are incurred by the advancing party for the benefit and account of the party accommodated."

The BIR, in a ruling, even agreed that reimbursement costs pursuant to a cost-sharing agreement are not subject to income tax as these are not income, stating that "well settled is the rule that reimbursement of costs shall not be regarded as income but as a return of capital."

Last, with respect to VAT in various BIR rulings, the BIR explains that in reimbursement-at-cost transactions, expenses that are incurred by the advancing party for the benefit and for the account of the party accommodated can be considered reimbursable expenses not forming part of the gross receipts of the advancing party subject to tax. Since the party seeking reimbursement does not sell, barter, exchange, or lease any food or property, nor does it render any service to the party accommodated, the reimbursement transactions are not subject to VAT.

With the issuance of RMC 5-2024, multinational companies may find it difficult to have reimbursement or allocation of expenses transactions with Philippine companies because of the imposition of tax on these transactions. For better clarification, the BIR could provide guidance to the taxpayer regarding the transfer pricing aspect. For instance, depending on the specific facts and circumstances of each case, the group service provider should charge an appropriate arm's length markup for its function in arranging and paying for the acquired services on behalf of its related parties, especially when the group service provider adds significant function or provides value-added services.

Considering the risks and costs in the case of tax audit, it would be wise on the part of the local companies reimbursing or repaying the allocated costs from their foreign affiliates located in countries that have a tax treaty with the Philippines to confirm the tax consequences of the arrangements through a Request for Confirmation.

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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