Marcos: Economic picture clearer when stripped of climate impacts

PRESIDENT Ferdinand R. Marcos, Jr. said he aims to pitch investors by calling their attention to the underlying strength of the Philippine economy, saying that stripping out climate impacts and other elements beyond the country's control provide a clearer picture.

"When you look at our financial numbers, you have to isolate the shocks that are hitting the economy and remove agriculture to be able to understand clearly what is happening, which are shocks that are completely out of control," he said at a World Economic Forum briefing on Tuesday at the Palace, based on a transcript distributed to reporters.

"So, the shift from fossil fuels to renewable is something that takes up a great deal of our thinking and that is why many of the investments that we are hoping to attract are in that area, in renewables," he added.

He said the Philippines is looking to attract more government-to-government investment to support the green transition and to help digitalize the bureaucracy.

The official target for the share of renewable energy (RE) in the power generation mix is 35% by 2030 and 50% by 2040. RE currently accounts for 22% of the mix.

Based on a study by economists at the Bangko Sentral ng Pilipinas published last week, rising temperatures and climate shocks such as the El Niño weather phenomenon could fan inflationary pressures and reduce economic output over the next few years.

Central bank experts projected that the inflationary effect of these climate shocks was "significantly" persistent up to the fourth year after a shock.

Temperature shocks could increase headline inflation by 0.46 percentage point (ppt) in the short term and as much as 0.81 ppt long term, they said.

Inflation accelerated for the first time in five months to 3.4% in February as food prices continued to rise. Rice inflation surged to 23.7% that month.

At the same forum, San Miguel Corp. President and Chief Executive Officer Ramon S. Ang contested the idea of the Philippines not being competitive due to its high power and fuel costs, arguing that such costs appear high since other Asian countries' energy sectors are subsidized.

"The Philippines, comparing its actual power and fuel cost with other countries, (would be) the lowest in Asia (without) the Philippine government's imposition of excise tax and value-added. All other countries subsidize their fuel and power," he said.

Meanwhile, Mr. Marcos said the government is also focused on attracting more investment in digital upskilling and new forms of technology for the energy sector.

"Whenever we speak of investments, I always ask (whether) we have, in fact, a training program (and), if there is a transfer of technology," he said.

"For workers, to be able to compete properly in the international markets, specialized skills are necessary," he added.

Last week, US Secretary of Commerce Gina Raimondo said US companies pledged to bring in more than $1 billion in investments to the Philippines.

She said about 30 million workers are expected to benefit from the US digital upskilling investment pledges.

Secretary of State Antony Blinken, who visited Manila this week, said the US will continue supporting Philippine manufacturing and the clean energy sector. — **John Victor D. Ordoñez**

Target for building new ports set at 200 by 2028

THE Department of Transportation (DoTr) said it is planning to build 200 new ports by 2028 to improve connectivity and facilitate economic growth.

"We have identified (sites) outside of the Philippine Ports Authority system because these ports to be developed by the DoTr are mostly small," Transportation Undersecretary for Maritime Elmer Francisco U. Sarmiento told reporters on the sidelines of the Philippine Ports and Logistics forum on Wednesday.

The proposed new ports are valued at a combined P12.5 billion, the DoTr said, adding the typical project will cost between P20 million and P80 million.

"Again, this is about connectivity. We would like to connect these remote places, these remote islands, to bigger island economies for their economic growth," he said.

At the moment, the DoTr is seeking the approval of the Department of Budget and Management (DBM) to fund the proposed projects.

"We have identified (the 200 sites). We hope these will be approved by the DBM and that legislators provide a budget. If so, then we hope to accomplish these by 2028," he added.

One of the proposed ports will be located in the Turtle Islands of Tawi-Tawi province, Mr. Sarmiento said.

Such small ports will be for fishing boats and passenger RoRo boats, but again the main purpose is connectivity," Mr. Sarmiento said. — **Ashley Erika O. Jose**

NCR water allocation to be reduced starting late April

THE water allocation for Metro Manila will be reduced to 48 cubic meters per second (cms) between April 16 and 31, according to the National Water Resources Board (NWRB).

"For April 1 to 15, we will still maintain the 50 cms for MWSS... and then on April 16-31 (it) will be reduced," NWRB Executive Director Ricky A. Arzadon told reporters on Wednesday.

Mr. Arzadon said that the reduced allocation was due to the infrequent rainfall resulting from El Niño.

The reduction was intended "to preserve and manage the distribution of water especially to Metro Manila," he said.

He said, however, that the allocation may change depending on the elevation of the Angat Dam.

Angat Dam is the main source of water for National Capital Region (NCR), accounting for about 90% of the capital region's potable water.

As of Wednesday morning, the water level in Angat Dam was 200.99 meters, lower than the 201.23-meter reading a day earlier.

Ronaldo Padua, head of water supply operations of Maynilad Water Services, Inc., told reporters separately that it was directed by the Metropolitan Waterworks and Sewerage System to deploy static water tanks.

"Roughly around 129 static water tanks are deployed in (various) elevated areas," he said.

Mr. Padua said that the company has been implementing pressure management measures during off-peak hours as part of its preparations to mitigate the impact of El Niño.

Meanwhile, as an additional source of water, a P650-million modular treatment plant, has been inaugurated in Putatan, Muntinlupa City. It is expected to produce 20 million liters per day.

Maynilad said that the new plant will help improve service reliability for its customers in the south.

The company said that the plant will treat raw water from Laguna de Bay using ceramic ultrafiltration technology, which it claims is the first such system for water treatment in the Philippines.

"Maynilad continues to adopt innovative solutions to meet the evolving water supply and treatment challenges, ensuring long-term resilience and sustainability," Maynilad President and Chief Executive Officer Ramoncito S. Fernandez said. — **Sheldeen Joy Talavera**

JCI QUEZON CITY CAPITOL FETES JOECON. *Go Negosyo founder Joey Concepcion received the Gawad Sanghiran Award on behalf of his father, the late Jose "Joecon" Concepcion Jr. The award was given by the JCI Quezon City Capitol during their 63rd Induction and Turnover Ceremonies held last March 1, 2024 at the Elements at Centris in Quezon City, a few days before the respected civil society leader, businessman and NAMFREL founder died on March 6, 2024.*

IT-BPM firms dominate list of 'best workplaces'

INFORMATION TECHNOLOGY and business process management (IT-BPM) companies featured prominently in the fifth annual Best Workplaces List in the Philippines, according to the list's compiler, Great Place to Work (GPTW).

"Many of these organizations are from the IT-BPM industry, primarily (from the point of view of hiring) a lot of employees," GPTW Philippines Managing Partner Antoniette Mendoza-Talosig told reporters on the sidelines of the awards ceremony late Tuesday.

"Historically, we've already seen that (IT-BPM companies) are putting much effort into employee satisfaction or employee happiness," Ms. Mendoza-Talosig said.

She said that IT-BPM companies on the list are listening to their employees on flexible work arrangements.

One example, she said, is Synchrony Global Services, Inc., the top workplace in the list for companies with 1,000 and more workers, which has decided to embrace remote work.

She said the company noticed a downward trend in employee engagement, with departures resulting from the announcement of the initial return-to-office order.

"So they listened to their employees and implemented remote work, which has improved their employees' experience substantially," she added.

Synchrony was also awarded the "Great Place to Work Legend" title for being on the list for five consecutive years, together with DHL Express Philippines, which topped the list in the medium category — companies with 100 to 999 employees.

The other top workplaces in the large category are Accenture, TaskUs, Lexmark Research and Development Corp., Teleperformance, Capital One Philippines, DXC Technology Philippines, CGI Philippines, Inc., [24]7.ai Philippines, and Tech Mahindra Ltd. Philippines.

For the medium category, the other companies on the list were Cisco, Hilton, Atlassian, Via Appia Philippines, Inc., 3M GSC Philippines, Hilti Philippines, Inc., Balsam International Unlimited Co. Philippine ROHQ, General Motors Philippines, Lingaro (Philippines), Inc., Amadeus Marketing Philippines, Inc., SCJ Philippines, Aurecon, Genesys Cloud Services Cayman Ltd., and Thumbtack Philippines. — **Justine Irish D. Tabile**

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OPINION

Not as simple as it seems

TAXWISE OR OTHERWISE
STEVEN LLOYD CO

During tax audits, particularly for companies that provide services to non-resident foreign corporations (NRFCs), one of the usual findings of the Bureau of Internal Revenue (BIR) is whether such sales of services qualify for value-added tax (VAT) zero-rating.

Under Section 108(B)(2) of the Tax Code, the following conditions must be satisfied for services (other than processing, manufacturing or repacking of goods) to qualify for VAT zero-rating:

1. The services should be rendered in the Philippines;

2. The payment for such services must be in an acceptable foreign currency and accounted for in accordance with Bangko Sentral ng Pilipinas (BSP) rules and regulations; and

3. The recipient of such services must be doing business outside the Philippines.

Normally, the first two requisites can easily be supported by available documents, such as agreements/contracts, certificates of inward remittance, among others, and are no longer disputed by the BIR in most cases.

From my experience, it is the third requisite that generally gets contentious. While the condition as written in the law is for the foreign customer to be doing business outside the Philippines, in practice, the BIR and courts equally watch out for the converse action, i.e., that the foreign customer must not be doing business in the Philippines.

'DOING BUSINESS OUTSIDE THE PHILIPPINES'

Under the Foreign Investment Act of 1991, the phrase "doing business" includes soliciting orders, service contracts, opening offices, whether called "liaison" offices or branches; appointing representatives or distributors domiciled in the Philippines or who in any calendar year stay in the country for a period or periods totaling 180 days or more; participating in the management, supervision or control of any domestic business, firm, entity or corporation in the Philippines; and any other act or acts that imply a continuity of commercial dealings or arrangements, and contemplate to that extent the performance of acts or works, or the exercise of some of the functions normally incident to, and in progressive prosecution of, commercial gain or of the purpose and object of the business organization.

Based on a 2021 Supreme Court case, there are two general tests to determine whether a foreign corporation is "doing business" in the Philippines:

1. Substance test – whether the foreign corporation is continuing the body of the business or enterprise for which it was organized or whether it has substantially retired from it and turned it over to another.

2. Continuity test – continuity of commercial dealings and arrangements, and contemplates, to that extent, the performance of acts or works or the exercise of some of the functions normally incident to, and in the progressive prosecution of, the purpose and object of its organization.

Meanwhile, in terms of appropriate documentation to prove that the NRFC is doing business outside the Philippines, the Supreme Court and Court of Tax Appeals (CTA) sitting en banc in several cases have held that at the very least, both (1) a Securities and Exchange Commission (SEC) Certificate of Non-registration of Corporation/Partnership, and (2) a Certificate/Article of Foreign Incorporation/Association, should be provided. However, bear in mind that it is not as simple as it may seem. These are just the minimum requirements to prove that the NRFC is indeed a foreign corporation. During a tax audit, the BIR may still request additional documentation to prove that these NRFCs are not doing business in the Philippines, and therefore, qualified for VAT zero-rating. Following the substance and continuity tests laid down by the Supreme Court, there must be no indication that the NRFC is doing business in the Philippines.

In fact, just this year in CTA en banc No. 2685 dated Jan. 24, the CTA held that although the above documents were provided as support, even including a Tax Residency Certificate and Certificate of Business Registration issued by a foreign government authority, the transaction still did not qualify for VAT zero rating.

In that case, the main reason cited by the tax court for imposing VAT on the services was the appointment of the Philippine taxpayer/service provider as the NRFC's authorized representative in the Philippines and the terms of their agency agreement. Based on their agreement, the Philippine taxpayer-service provider would promote, make available, facilitate access to the NRFC's System and act as a neutral agent for all NRFC subscribers in the Philippines subject to the payment of a distribution fee.

However, the Court noted that the NRFC has the following rights which manifest its continuous participation in the dealings of the Philippine taxpayer in the Philippines:

1) The NRFC is permitted to directly contract with multinational subscribers based within or outside the Philippines;

2) The NRFC may contract with subscribers within the Philippines who wish to make use of the global distribution system services through the NRFC's online and corporate products; and

3) The NRFC may, on its own, terminate the agreement entered between any Philippine subscriber in the event of misuse or abuse of the System.

Article 1868 of the Civil Code provides that a contract of agency requires the presence of the following essential elements: (1) there is consent, express or implied of the parties to establish the relationship; (2) the object is the execution of a juridical act in relation to a third person; (3) the agent acts as a representative and not for himself, and (4) the agent acts within the scope of his authority.

According to the CTA, it is clear that the agreement meets the elements of an agency contract, debunking any notion that the NRFC is not doing business in the Philippines. With this, the Court ruled that even though the parties were able to prove through the submission of the required minimum documents that the NRFC is indeed a foreign corporation, it is, however, doing business in the Philippines. Thus, the related distribution fees paid by the NRFC are not qualified for VAT zero rating.

This just goes to show once again what the Supreme Court has held on multiple occasions, that the determination of whether or not a NRFC is doing business in the Philippines should be done on a case-to-case basis. It is not as simple as presenting evidence that an NRFC is a foreign corporation; as that only satisfies one part of the equation. To fully satisfy the "doing business" condition for VAT zero-rating, there must also be no indication that such foreign corporation is performing acts or functions that are normally incident to the pursuit of its primary purpose or main business.

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.

STEVEN LLOYD CO is a manager at the Tax Services department of Isla Lipana & Co., the Philippine member firm of the PwC network.
+63 (2) 8845-2728
steven.lloyd.co@pwc.com