BCDA plans new auction for New Clark City water contract

THE Bases Conversion and Development Authority (BCDA) said that it is planning a new auction of the New Clark City (NCC) water concession, after the previous awardee backed out.

BCDA Chairman Delfin N. Lorenzana told reporters on Tuesday that the previous NCC water concessionaire withdrew due to the "low number of clients."

"So right now, our interim agreement is for Filinvest to take over because it needs water for its development in New Clark City... But yes, we are going to bid out the water there," Mr. Lorenzana said.

In November 2018, a consortium led by Villar Group's Prime Water Infrastructure Corp. and Israel's Tahal Group won the bid to deliver water and wastewater services in New Clark City.

"Prime Water's reason for backing out is that there aren't many clients. There are really few people in New Clark City, so there's no one to use the water yet," he added.

At the moment, he said that the source of New Clark City's water is underground. The BCDA is also planning to develop a separate surface water source.

"According to (Tarlac) Governor Susan A. Yap, there's a big river in Tarlac that the BCDA can develop," Mr. Lorenzana said.

He said that the dams surrounding New Clark City are some distance away — Ipo Dam in Bulacan, San Roque Dam in Pangasinan, and Pantabangan Dam in Nueva Ecija.

He added that the surface water project will be vital to attracting more investors to Clark, and described the water supply in New Clark City as inconsistent.

"We expect more (investors) to come in once we develop the roads and bring in power and water," he said.

"Right now, we are receiving interest from the Koreans, and most of them want to build a golf course," he added.

According to Mr. Lorenzana, the progress of road development in New Clark City is currently at 15%. — **Justine Irish D. Tabile**

Gov't employee incentives on track for release amid ongoing review — DBM

THE GOVERNMENT is on track to release incentives for public sector employees this year even with the ongoing review of its performance evaluation system, the Department of Budget and Management (DBM) said on Wednesday.

The DBM said the review was triggered by Executive Order (EO) No. 61, which had suspended the Results-Based Performance Management (RBPM) as authorized under Administrative Order No. 25 and the Performance-Based Incentive (PBI) systems as authorized by EO 80.

"We wish to emphasize that the release of the 2022 and 2023 performance-based incentives to qualified government workers in the government will proceed," the DBM said in a statement.

President Ferdinand R. Marcos, Jr. issued EO 61 on June 3 to resolve redundancies in the government's performance audit and evaluation systems.

"The EO only seeks to review the RBPM and PBI systems in order to harmonize, streamline and make the process of releasing personnel incentives more efficient and timely," the DBM said.

The PBI systems include the Performance-Based Bonus (PBB) and the Productivity Enhancement Incentive (PEI) to reward civil servants for their performance and accomplishments in meeting government targets.

"Under the EO, possible refinements may be made for the more efficient and streamlined release of the 2023 PBB. The budget allocation for the 2024 PEI has already been comprehensively released to agencies and shall also proceed," the DBM said.

The DBM added that the PEI for 2025 will be included in this year's National Expenditure Program to be submitted to the President this month.

A technical working group was created under EO 61 to review the RBPM and PMI systems. The Budget Secretary and Executive Secretary will chair and co-chair the group.

Other members of the committee include the Secretaries of Finance and the National Economic and Development Authority, and the Director-General of the Anti-Red Tape Authority.

Alongside the PBB and PEI, government employees are also entitled to a mid-year and year-end bonus. — **Beatriz Marie D. Cruz**

FREEPIK

30-year railway master plan to be completed by end of 2024

THE Department of Transportation (DoTr) expects to complete the 30-year railway master plan by year's end.

"We should be able to have it before the end of the year. JICA (Japan International Cooperation Agency) is doing it," Transportation Secretary Jaime J. Bautista said on the sidelines of an event this week.

"We do not have (an update), because we need the whole study. It may take some time for JICA to complete," he said.

The DoTr has said that the 30-year master plan will serve as a "springboard" for discussions in achieving sustainable operations for big ticket rail projects such as the Metro Manila Subway; North-South Commuter Railway; Metro Rail Transit Line 3 and other ongoing and upcoming rail projects.

According to JICA, the master plan will "support and expand the Philippines' ongoing efforts to address transport infrastructure gaps and perennial commuter difficulties."

In 2023, the Transportation department said that the JICA had committed 300 million yen to formulate the 30-year railway master plan.

The master plan also aims to bring Philippine rail lines to an international standard using Japanese technology, the DoTr said. — **Ashley Erika O. Jose**

Hotel industry targets expansion of 15,000 rooms over next 5 years

THE Philippine Hotel Owners Association (PHOA) said it is expecting its members to expand by about 15,000 rooms over the next five years.

"We have about 217 hotels all over the country, and our estimated room inventory is about 40,000 rooms. In the next five years, we hope to add 15,000 rooms" across 50 new projects, PHOA Executive Director Benito C. Bengzon, Jr. said on Tuesday.

"We continue to look for opportunities in and out of metropolitan areas," Mr. Bengzon said.

He said the hotel industry must raise its game to be regionally and globally competitive.

"If you look at the inventory in Thailand, Malaysia, and even Vietnam, they have far bigger numbers than what we have," he added.

In terms of revenue and occupancy rate, PHOA President Arthur M. Lopez said the association remains bullish on growth, though it has not yet recovered from pre-pandemic levels.

"We are very positive about it, especially with the Department of Tourism being very bullish and doing everything to increase arrivals," Mr. Lopez said.

"But what we really need are more flights and hotels. You know, there are certain locations where you cannot really get a hotel room," he added.

He said that there is a need to improve infrastructure, such as the roads to the hotels, to increase the convenience for guests.

"We are very confident that things will improve, as our average occupancy rate is 70% and we want it to be higher," he said.

"But the most important thing is that we want our yield to improve. That is really the key, as you could be low occupancy with a high yield," he added.

He described the industry's recovery as variable, depending on the area.

"Some hotels are doing very well, particularly in the National Capital Region, as there is business traffic there and a higher rate," he said.

"But in general, the occupancy rate is not consistent," he added, citing the seasonality of demand and rates in Bohol hotels.

Asked for his outlook for the recovery in the Chinese visitor market, he said there is not much movement from China.

"They are not traveling as much as they used to, so we need to start looking at other markets such as Japan, Thailand, even Taiwan and India, because they are traveling," he said.

"We can invite them to come, and I think now the government is working on making sure that it is easier for people in India to get tourist visas to the Philippines," he added. — **Justine Irish D. Tabile**

PHL drops 9 places in WEF gender index

THE PHILIPPINES dropped nine places in the 2024 Global Gender Gap Index of the World Economic Forum (WEF) to 25th out of 146 countries, though it remained the highest-placed Southeast Asian country.

It was third in East Asia and the Pacific region, behind New Zealand (4th) and Australia (24th), with a score of 77.9%, according to the WEF report released on Wednesday.

The Philippines was well above the Eastern Asia and the Pacific average of 69.2%.

"Governments are called on to expand and strengthen the framework conditions needed for business and civil society to work together in making gender parity an economic imperative — one that fulfills the most basic of needs and inspires the very edges of innovation," WEF Managing Director Saadia Zahidi said in the report.

The index grades four key dimensions: Economic Participation and Opportunity, Educational Attainment, Health and Survival, and Political Empowerment.

The next best performers in the region are Singapore, Thailand, and Vietnam with rankings of 48th, 65th, and 72nd respectively.

Rankings for the rest of the region were Timor Leste (86th), Laos (89th), Indonesia (100th), Cambodia (102nd), Brunei (105th), and Malaysia (114th). Myanmar was not included in the study. — **Chloe Mari A. Hufana**

Eight countries seek clearance to export meat

THE Department of Agriculture (DA) said eight countries are seeking approval to export meat to the Philippines.

In a special order, the DA said that it will send inspectors to accredit meat production facilities in the eight countries — Uruguay, India, Argentina, Russia, Denmark, Spain, Sweden, and the US.

Under Administrative Order No. 16 of 2006, prospective exporters are required to apply for accreditation to ship animals, meat, and meat products to the Philippines.

The inspection missions will include technical experts on border control and animal health, and representatives from the Bureau of Animal Industry (BAI).

It added that inspectors are to prepare an import risk analysis report within 30 days after conducting on-site inspections and document validation.

"To ensure the health and safety of the consuming public and the domestic livestock and poultry industry, the DA implements a comprehensive set of rules, regulations and procedures guided by appropriate issuances governing pre-border measures," it added. — **Adrian H. Halili**

OPINION

Clarifying the taxability of cross-border services

TAXWISE OR OTHERWISE
MARY ROSE LARA

Lately, Revenue Memorandum Circular (RMC) No. 5-2024 has become a hot topic of discussion. Just last quarter, two articles were released discussing the implications of this circular and how it will impact transactions moving forward. You might be tired of hearing about this, but here is another one.

After negative reactions from various stakeholders, it's no surprise that the Bureau of Internal Revenue (BIR) will release clarifications aiming to shed light on what has become one of the most controversial BIR issuances to date. The subject of the RMC is the Supreme Court decision involving cross-border service transactions in the case of G.R. No. 226680 dated Aug. 30, 2022. A new circular, RMC 38-2024, seeks to address issues arising from the earlier circular by clarifying critical points on cross-border services, as follows:

APPLICATION OF THE RULING IN G.R. NO. 226680 TO CROSS-BORDER SERVICES

According to RMC 38-2024, the SC case does not automatically apply to international service provision or cross-border service agreements in Question 2 of the RMC 5-2024, since it did not expressly provide for such an application. Rather, a determination must be made on whether the source of income is within the Philippines by examining all the components of the cross-border service agreements between two taxing jurisdictions (i.e., that of the Philippines and the Non-Resident Foreign Corporations). Further, the services are to be viewed in their entirety and not as a single or compartmentalized particular activity as the income producing activity, in consonance with the Civil Code provisions on the performance of the thing or service which is the basis of the obligation. The same goes with the allocable or reimbursable expenses.

RMC NO. 5-2024 AND THE SOURCE OF INCOME RULES OF THE NIRC

Question 3 of RMC 5-2024 does not run counter to the rules on situs of income outlined in Section 42 of the National Internal Revenue Code (NIRC or the Tax Code), since it merely spelled out the main guideline in the determination of the source of income for cross-border services as provided in the second question of RMC 38-2024. Ultimately, the latest circular explains that following the ruling in the SC case, the situs of the source of income for labor or personal services is the location of the service that produces the income or where the inflow of wealth originates.

RMC NO. 5-2024 AND TAX TREATIES

Question 5 of RMC 38-2024 provides that if the income is clearly identified to be within the Philippines, the taxpayer is not precluded from invoking the particular tax treaty to either exempt the income (subject to the rules on the absence of permanent establishment) or reduce the tax to that of the preferential rate under the applicable tax treaty.

What is fascinating is the final provision of the latest circular which clarifies that the 25% final withholding tax and 12% final withholding VAT on the cross-border service transactions are actually not new impositions, suggesting a retroactive application of the two circulars and the SC decision. It reiterated that the Tax Code and the relevant revenue regulations already impose these taxes on the income of NRFCs from all sources within the Philippines. Is this really the case though? In the first place, was the issuance of the earlier circular in accord with the situs rules on income taxation?

In the January 2024 article on RMC 5-2024, the author thoroughly discussed how this RMC deviated from the Tax Code's rules on situs of taxation — how the circular adopted the "benefits-received" theory to determine the source of the income, and consequently, its taxability in the Philippines. This appears to be an attempt to impose tax on transactions even though they may have been physically rendered outside the Philippines, following the standards enunciated in the SC case. We may be settled on the fact that both circulars, in a way, have been maintaining their position on the taxability of cross-border transactions. Equally settled however is the fact that most of us will not agree to such a treatment, applying strictly and technically the provisions of our Tax Code.

The situs rule under the Tax Code is clear that for service fees of NRFCs to be considered income from Philippine sources subject to Philippine taxes (both income tax and VAT), the underlying service activity must be performed within the Philippines. If the circulars merely adopt this principle, it may be correct in saying that the tax impositions are not new. However, the two circulars and SC decision introduced a concept called "benefits-received," which is not in the NIRC.

The Tax Code does not categorically provide for a "benefits-received" approach in determining the taxability of certain transactions. Rather, the place where the services are performed set the parameters in determining taxability in the Philippines. Assuming, for the sake of argument, that the administrative agency may introduce principles not provided under our laws, such as the "benefits-received" theory in this case, this does not merit a retroactive application as it runs against the principle of prospectivity of laws, as a general rule. Notably, even an SC decision that introduces a new principle is applied prospectively. Tax laws impose burdens and are viewed like criminal laws, which should not be given retroactive effect unless beneficial to the taxpayers. After all, tax laws are strictly construed against the taxing authorities and in favor of the taxpayers.

The latest circular could have been an avenue to reconcile the gap between the differences in the appreciation of the ruling in the SC case vis-a-vis its proposed application based on the earlier circular. It was a response to the adverse reaction of stakeholders and could have ended the confusion in the minds of the public, but it somehow failed to do. At the end of the day, it is important for us to look at the basic principles in tax law — the supremacy of laws over administrative issuance, prospectivity and strict construction of a tax law. At this juncture, I believe that the issuance of the latest circular is still not enough to address the confusion brought about by the earlier circular. If at all, RMC 38-2024 shows the tax authorities' firm stand on the taxability of cross-border service transactions. In any case, I earnestly hope that the tax authorities will consider revisiting these circulars, taking into account the situs rules under the NIRC; otherwise, we will be running around in circles, stuck at an impasse.

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.

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