Rice buildup in port could mean holdout for better prices — PPA

Kyle Aristophere T. Atienza
Reporter

HUNDREDS of containers bearing rice remain unclaimed in port, with the port regulator saying that importers may be awaiting better market prices or trying to save on warehousing costs.

Speaking at a Palace briefing, Philippine Ports Authority (PPA) General Manager Jay Daniel Santiago acknowledged the possibility that importers were timing their withdrawals of rice from the Manila International Container Terminal with an eye towards market prices and storage costs.

Market conditions are at the moment not favorable to importers because of government efforts to lower rice prices, including the reduction in tariffs, he noted.

Mr. Santiago said the shipments that had been overstaying totaled 888 containers, of which 300 were claimed this weekend after the authorities warned that shipments were building up.

Mr. Santiago added that the ports are not congested. He was addressing claims that the slow unloading of imported rice shipments is delaying the expected fall of rice retail prices, foiling government plans to contain inflation.

Mr. Santiago noted that keeping containers in port is cheaper than holding shipments in private warehouses.

"Because of our exposition of overstaying containers of rice, 300 containers were pulled out by their consignees at the weekend," Mr. Santiago said.

He said options for the disposal of the shipments deemed abandoned by the Bureau of Customs include auction or donation to government agencies like the Department of Social Welfare and Development.

Some of the shipments will be declared abandoned starting Oct. 1, he said.

Agriculture Undersecretary Arnel V. de Mesa said the 888 containers held about 23,000 metric tons (MT) of imported rice, equivalent to 0.75% of all imports so far this year.

Imports in the year to date amounted to 3,093,000 MT.

"This is just a small amount, but if we look at the absolute value, this is still 23,000 metric tons," Mr. De Mesa said.

The Bureau of Customs at the weekend said only 630 containers of rice remained at the port, noting that none of the shipments still unclaimed were staying in excess of 30 days.

Mr. Santiago cited instances of containers remaining in port for as long as 275 days.

The government will monitor other commodities like pork, chicken, and onions to ensure they are not overstaying, Mr. De Mesa said.

Agriculture Secretary Francisco Tiu Laurel, Jr., has said that the delayed release of rice imports from ports was a factor in the delayed fall in rice prices.

The government aims to reduce rice prices by P5 to P7, in part by bringing in cheaper imports.

Inflation eased to 3.3% last month from 4.4% in July, as food price growth moderated while transport costs declined.

The share of rice in inflation fell to 14.7% from 20.9% in July and 22.5% in June. It remained the largest component of inflation in August.

5 regions selected for 7-year agri climate resilience project

THE Department of Agriculture (DA) said that its $39.2-million climate resiliency program will operate in five vulnerable regions, benefiting 1.25 million farmers.

In a statement, the DA said the seven-year Adapting Philippine Agriculture to Climate Change (APA) project will promote "the adoption of climate-resilient farming practices, empowering farmers to establish sustainable enterprises."

Within the five regions, which are the Cagayan Valley, the Cordillera Administrative Region, Bicol, Northern Mindanao, and Soccsksargen, the project will roll out across nine provinces and 100 municipalities.

The project is a partnership with the Food and Agriculture Organization (FAO) and the government weather service, known as PAGASA (Philippine Atmospheric, Geophysical and Astronomical Services Administration).

"Our combined efforts in implementing the APA Project will strengthen the foundation of progressive and resilient communities that we have begun through our various climate-resiliency-building initiatives," Agriculture Secretary Francisco P. Tiu Laurel, Jr. said.

FAO Country Representative to the Philippines Lionel Henri Valentin Dabbadie said that the project will have long-term benefits for vulnerable farmers.

"It's about creating opportunities for growth in the fields and through agricultural enterprises, ensuring that future generations continue to benefit from the rich agricultural heritage of the Philippines," Mr. Dabbadie added.

The DA said that the program would expand on its Adaptation and Mitigation Initiative in Agriculture Program. — **Adrian H. Halili**

House to adopt Senate version of VAT refunds for tourists measure

THE House of Representatives will adopt the Senate's version of a measure allowing tourists to claim value-added tax (VAT) refunds, with a legislator citing "direct instructions" from President Ferdinand R. Marcos, Jr. to expedite the bill's approval.

The House's version was deemed to contain "no substantial or fundamental differences with the House version," Albay Rep. Jose Ma. Clemente S. Salceda said.

Both House Bill No. 7292 and Senate Bill No. 2415 allow a VAT refund on P3,000 worth of goods provided they are taken out of the country within 60 days.

The Senate version adds that the P3,000 threshold is subject to a review every three years by the Finance department, with the department required to employ the services of "reputable, globally recognized, and experienced VAT refund operators" to establish the refund system.

"We are very amenable to the Senate version, which doesn't really deviate much from the House version," he said in a statement.

As such, the measure will no longer require a bicameral conference committee to convene to harmonize both chambers' versions.

Mr. Salceda, who heads the House ways and means panel, said he will recommend to Speaker and Leyte Rep. Ferdinand Martin G. Romualdez for the chamber to adopt the measure in plenary.

The measure's approval is expected to spur tourist spending, according to Mr. Salceda.

"Together with more modern airports and investments in the hospitality sector, we hope that the VAT refund for tourists will boost the country's bid for more tourist dollars," he said.

"It's part of a comprehensive strategy to bolster tourism. We are anticipating NAIA (Ninoy Aquino International Airport) improvements with the privatization, as well as the new Bulacan Airport," Mr. Salceda said.

The government could apply the tourist VAT refund system to other taxes, should the chosen provider do a "great job," he said. He raised the prospect of helping the government improve its performance in VAT refunds overall. — **Kenneth Christiane L. Basilio**

Bill granting VAT refund for non-resident visitors approved in Senate on final reading

THE SENATE on Monday approved on third and final reading a bill that seeks to establish a value-added tax (VAT) refund mechanism for nonresident visitors.

Twenty senators voted in favor of Senate Bill No. 2415, allowing eligible tourists to avail of VAT refunds for local purchases of goods worth at least P3,000. The House of Representatives approved a counterpart bill on third and final reading in March 2022.

Senate Minority Leader Aquilino Martin Pimentel III voted against the bill, saying that the Philippines was better off improving the tourist experience and tax administration.

"We have already lost billions in revenue due to these inefficiencies, compounded by ghost receipts, fraud, and an exemption-plagued tax system," he told the Senate floor after his vote.

"There are far more important matters pending before this august body that deserve our attention and prioritization."

Citing a 2018 World Bank study, he said the Philippines has lost about P539 billion in potential revenue due to VAT leakages and exemptions.

Enrico P. Villanueva, a senior lecturer at the University of the Philippines Los Baños Economics Department, said the system could be used to promote the Philippines as a premier shopping destination in Southeast Asia, but added that the government should partner with the private sector to boost tourist transportation and infrastructure.

"It is really more of a bonus rather than a primary factor in enticing tourists," he said in an X message. "There are more important factors that the Tourism department should look into to enhance the value proposition of the country as a destination."

"By allowing foreign visitors to claim VAT refunds on goods they purchase in our country, we create an environment that not only attracts more tourists but also encourages them to spend more on our products, which will eventually be taken out of the country," Senator Sherwin T. Gatchalian, who sponsored the measure, told the Senate floor following its approval. — **John Victor D. Ordoñez**

OPINION

Transfer pricing considerations in cash pooling arrangements

LET'S TALK TAX
SHEENA MARIE DAÑO

According to the Organisation for Economic Cooperation and Development (OECD), the use of a cash pool is popular among multinational enterprises as a way of achieving more efficient cash management by bringing together, either physically or notionally, the balances of a number of separate bank accounts. A cash pool can generally aid in improving liquidity management, reducing reliance on external borrowing or, where there is a cash surplus, enhancing returns on any aggregated cash balance. Financing or banking transaction costs may also be reduced.

WHAT IS CASH POOLING?

The OECD guidelines define cash pooling as the pooling of cash balances as part of a short-term liquidity management arrangement, with the purpose of optimizing the overall cash position of a group of companies. Depending on the arrangements, cash pooling is generally structured into physical pooling and notional pooling.

Physical pooling involves consolidating multiple cash accounts into a cash pool or a centralized account, wherein any cash deficits and surplus are managed through fund transfers to and from the centralized master account and the sub accounts. Notional pooling, on the other hand, does not involve any physical fund transfers between accounts. Rather, it involves the consolidation of credit and debit balances of separate bank accounts into a central account for the purpose of interest calculations.

In a typical cash pooling arrangement, there is a cash pool leader and its cash pool members. The cash pool leader owns and manages the centralized master account under physical pooling, as well as the central account for interest determination under notional pooling. The cash pool members are the subsidiaries or the business units of the group of companies, which can either function as cash pool borrowers or cash pool depositors.

To illustrate, a parent company sets a central cash account, with the parent acting as the cash pool organizer or cash pool leader. In some cases, one of the subsidiaries functions as the cash pool leader, depending on the needs of the group of companies. Both the parent company and the subsidiaries can deposit or borrow funds within a specific period, wherein interest is generally charged.

WHAT ARE THE TRANSFER PRICING IMPLICATIONS OF CASH POOLING?

Cash pooling is a form of internal financing among related parties and, as such, can be subject to several potential transfer pricing challenges, particularly when it involves multiple tax jurisdictions. According to the OECD guidelines, the possible transfer pricing implications are as follows:

• Accurate delineation or characterization of cash pooling transactions

The accurate characterization of the cash pooling transactions will depend on the particular facts and circumstances of each case as well as the wider context of the conditions of the pooling arrangement as a whole. For example, a cash pool is likely to differ from a straightforward overnight deposit with a bank or similar financial institution in that a cash pool member with a credit position is not depositing money as a transaction in isolation with a view to a simple depositor return. Pool participants deposit cash to the pool (or withdraw cash from the pool), and not to (or from) a particular cash pool member.

The absence of a formal agreement does not preclude the proper determination of the actual nature of the transaction. If the transaction is not aligned with the short-term deposit of excess capital and short-term borrowing, the cash pool arrangement would possibly be treated as a term loan, a longer-term deposit, a dividend distribution, or a mixture thereof.

In a case involving a company and the tax authority of Switzerland, the company entered into a physical cash pooling arrangement for short-term financing, with the company's sister company a the cash pool leader. Due to its nature and terms, the Court ruled that the cash pooling agreement was a mix of long-term loan and short-term cash pooling arrangements, due to the nature and terms therein. As such, the interest rates should be recomputed to represent both transactions.

Considering the complexity of cash pooling, accurately identifying the circumstances surrounding the transaction is critical in determining whether it should be treated as a cash pool or another type of transaction.

• Rewarding the cash pool leader function

The appropriate renumeration for the cash pool leader depends on the facts and circumstances, functions performed, assets used, and the risks assumed in facilitating a cash pooling arrangement.

In general, a cash pool leader performs no more than a co-ordination or agency function, with the master account being a centralized point for a series of book entries to meet the pre-determined target balances for the pool members. Given such a low level of functionality, the cash pool leader's remuneration as a service provider will generally be similarly limited.

In the case involving a group of companies and the tax authority of Denmark, two subsidiaries of the group entered into a physical cash pooling arrangement in which the Danish subsidiary was required to deposit surplus funds in the cash pool and was allowed to borrow funds when needed, while the Swiss subsidiary was appointed cash pool leader, handling the creation of the cash pool account, accounting and maintaining documentation of the intercompany accounts, computing the monthly interest rate, and overseeing liquidity and risk management. In the year under tax audit, the Danish subsidiary was in a lender position and the Swiss subsidiary was performing routine administrative functions. The tax authority of Denmark and its Court ruled that the Danish subsidiary should earn a higher return to reflect its risk as a lender, while the Swiss subsidiary should earn a lower return to reflect its routine administrative functions.

•Rewarding the cash pool members

The remuneration of the cash pool members will be calculated through the determination of the arm's length interest rates applicable to the debit and credit positions within the pool. This determination will allocate the synergy benefits arising from the cash pool arrangement among the pool members, and it will generally be done once the remuneration of the cash pool leader has been calculated. Eventually, the remuneration of the cash pool members will depend upon the specific facts and circumstances and the functions, assets, and risks of each of the pool members.

For instance, in the case involving a group of companies and the tax authority of Norway, two subsidiaries of the group entered into a physical cash pooling arrangement with the group's treasury company, under which the cash pool members deposited surplus cash in multiple currencies to a third-party bank. The bank accounted the cash pool members' deposits and withdrawals as one account per currency type and imposed different interest rates, depending on the net cash position. In the year under tax audit, both subsidiaries earned interest income under the same interest rate on deposits. The tax authority of Norway and its Court ruled that the interest rate earned by the two subsidiaries should be divided based on their respective actual contributions.

KEY CONSIDERATIONS IN AN ARM'S LENGTH CASH POOLING ARRANGEMENT

Factoring in the complexity of cash pooling and its possible transfer pricing implications, the following are key considerations in setting up an arm's length cash pooling arrangement:

1. Analyze the characterization of the cash pooling arrangement to properly classify the transaction.

2. Map out the functions, risks, and other underlying factors of the cash pool leader and each of the cash pool members to identify the appropriate rewards.

3. Determine the appropriate transfer price (e.g., interest rate) of the cash pooling arrangement.

4. Document the cash pooling arrangement through a financing policy, cash pooling agreement, transfer pricing documentation, and other supporting documentation, to provide sufficient evidence during tax controversies.

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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