

# DoE still focused on BNPP rehab but ‘aware’ of data center plan

THE Department of Energy (DoE) said its focus remains on reviving the monthballed Bataan Nuclear Power Plant (BNPP), adding though that is studying a proposal from Bataan province to convert it to a data center.

“We are aware of the position of the provincial government. Typically from our understanding, a data center is about 100 megawatts. If there’s a lot being processed, (it) can go higher. That is why in discussions of the clean energy transition in other countries, investments are being made in nuclear research and development of nuclear energy,” Patrick

T. Aquino, director of Energy Utilization Management Bureau of the DoE, told reporters on the sidelines of an event.

In late September, Bataan Governor Jose Enrique S. Garcia III floated the data center plan, touting it as a potential draw for investors.

For now, Mr. Aquino said the Energy department’s focus remains on studying the feasibility of restoring the BNPP to its intended function as a power plant.

Last month, the Philippines and South Korea signed a memorandum of understanding to conduct the feasibility study.

“The Philippines and the Korean government are working on a feasibility study. We will abide by what the results are. If it turns out we can operate it, (a revival of the plant) will not be automatic. There will be a lot of public consultation,” he said.

Mr. Aquino said the DoE has commissioned a survey to assess the public acceptance of nuclear power.

“We have received the results of that study. It is being presented to the government officials. Once it is digested by our officials, we will make it public,” he said.

He said the DoE is targeting at least 80% acceptance of nuclear power among the host communities.

“Nationwide, it has greater sensitivity. There are more respondents. I think what I can tell you is that (acceptance) is about the same level that we had from the 2019 survey,” Mr. Aquino added.

In 2019, the DoE and Social Weather Stations conducted a public perception survey which indicated that about 79% of respondents favored the revival of the BNPP; while about 65% were receptive to building a new power plant. — **Ashley Erika O. Jose**



## Skills mismatch indicates need for better labor market forecasting — PIDS

By **Aubrey Rose A. Inosante**  
*Reporter*

THE Philippine Institute for Development Studies (PIDS) said skills mismatches and shortages indicate a need to improve forecasting with the aid of a Labor Market Information System (LMIS).

In a statement on Monday, PIDS, a government think tank, said outdated and incomplete labor market information may be behind the problem of skills mismatches, undermining productivity and economic competitiveness.

“A comprehensive labor market data system should provide a framework for anticipatory skills mapping, connecting current educational outputs to future labor needs and ensuring that national skill sets evolve with the economy,” PIDS Senior Research Fellows Connie Bayudan-Dacuyucuy said.

An LMIS could serve as a “central database” that collects, analyzes, and disseminates data on labor market trends, skills demand, and workforce needs, PIDS said.

Ms. Dacuyucuy said an LMIS will enable government agencies and industries to identify skills shortages, align educational programs with labor market needs, and make informed policy decisions.

She also highlighted the need for establishing a skills data foundation, starting with a comprehensive skills taxonomy aligned with the Philippine Standard Occupational Code.

“A strong LMIS, supported by standardized data taxonomies and sector collaboration, is important to bridge information gaps and prepare the workforce for future job demands,” she said.

Ms. Dacuyucuy was presenting the findings of her study, “Inputs to the Philippine Labor Market Information System and TESDA’s Skills Anticipation and Prioritization of Skills Requirements Framework.”

Technical Education and Skills Development Authority (TESDA) Executive Director Charlyn Justimbaste called LMIS “essential for anticipating skill requirements and ensuring our education outputs meet the evolving needs of the economy, and addressing the critical skills mismatch that hinders growth.”

She also highlighted the need for a regional, demand-driven approach through the National Technical Education and Skills Development Plan 2020-2028 to boost global recognition of Philippine technical and vocational education.

“To bridge the skills gap, we must enhance our apprenticeship and dual training systems, as these models have proven effective in aligning educational outcomes with industry needs,” according to Emily Christi Cabebin, professor at the University of the Philippines School of Labor and Industrial Relations.

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## DBM: Diplomat allowance adjustments long overdue

THE Department of Budget and Management (DBM) said Executive Order (EO) 73 adjusting foreign service personnel allowances is long overdue after the last adjustment in 2013, with the cost of living in overseas posts having risen significantly.

EO 73, issued Oct. 30, updates the rates, indices, rules, and regulations governing the payment of various allowances applicable to all National Government employees assigned overseas.

“For too long, the financial support provided to our diplo-

mats has not reflected the complexities and challenges associated with their assignments, not to mention the reality of facing higher cost of living abroad and being away from their families,” Budget Secretary Amenah F. Pangandaman said in a statement.

The executive order covers the overseas allowance (OA), living quarters allowance (LQA), representation allowance, family allowance, and education allowance.

The increase authorized by the EO in the base rates for the OA and LQA ranges from 35% to

40%, which will be implemented in four tranches.

“The updated rates and indices resulted from the comprehensive review conducted by the Department of Foreign Affairs (DFA) and the DBM of the allowances under EO 156, s. 2013,” the DBM said.

These are part of the System of Allowances for Foreign Service Personnel under Republic Act 7157 or the Philippine Foreign Service Act of 1991.

The DBM said for the initial year of implementation, the amount needed to cover the authorized ad-

justments in the allowances of the qualified FSs will be —taken from agency savings and/or the Miscellaneous Personnel Benefits Fund (MPBF) under the 2024 General Appropriations Act (GAA).

“Thereafter, funding for the succeeding years shall be provided in the annual GAA, subject to the usual budget preparation process,” it said.

In the 2025 National Expenditure Program, P974.98 million was earmarked for this purpose under the MPBF. — **Aubrey Rose A. Inosante**

## Child education reliant on efficient procurement system — UNICEF

THE GOVERNMENT must ensure efficient procurement for children’s supplies to improve the utilization of education funds, the United Nations Children’s Fund (UNICEF) said.

“Procurement is a very important part of a public finance system for children because its supplies that are very much

needed in the schools,” UNICEF Chief of Social Policy Maya Faisal told *BusinessWorld* last month.

The Budget department reported that the Department of Education posted a disbursement rate of 87.7% in 2020, 90.22% in 2021, and 91.89% in 2022.

Under the 1987 Constitution, education must be allocated the

biggest share of the government budget.

“It’s good to see the commitment of the government when it comes to allocation, but we want to be able to understand what is going on with execution,” Ms. Faisal said. “You have those almost

you know 15%, 12% that has not been fully optimized and utilized.”

Ms. Faisal cited issues in procurement procedures and access to remote areas as major bottlenecks hampering the full utilization of education funding. — **Beatriz Marie D. Cruz**

### OPINION

## Common tax findings with construction firms

**T**he Bureau of Internal Revenue (BIR) wields significant authority not only to levy taxes but also to investigate taxpayers’ books of account and accounting records. These investigations typically focus on verifying the accuracy and completeness of revenue and costs and deductions claimed by taxpayers. Avoiding tax investigations is often just a matter of hope.

For construction firms, given the complexities and unique nature of construction projects, which often involve multiple contracts, subcontractors, and varying timelines, the likelihood of tax scrutiny is heightened, making it essential to maintain meticulous records and stay compliant with tax regulations.

In this article, we’ll explore the common tax findings that construction firms face during BIR investigations.

### TIMING OF REPORTING OF CONSTRUCTION REVENUE AND RETENTION FEES

Taxpayers facing tax investigations know very well that the Revenue Officers (RO) often compare the revenue reported in the Annual Income Tax Return (AITR) and Value-added Tax (VAT) returns. This comparison frequently yields discrepancies.

For income tax purposes, construction firms report revenue on the basis of the percentage of completion, whereas for VAT purposes, such firms issue the invoice and report the revenue in the month in which the service is rendered or supplied. Ideally, there should be no timing difference as the two rules are parallel; however, what happens in real life is different.

On the other hand, retention fees are amounts or a portion of the invoiced revenues withheld by the client for the performance or completion of the contract. This practice serves as a form of security for the client, ensuring that the contractor completes the project satisfactorily and addresses any defects or issues that may arise after project completion.

In tax audits, retention fees normally cause discrepancies when comparing

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TRISHA AMOR M. GATDULA

the revenue reported in the AITR and VAT returns. While retention fees may have been reported in the income tax return for a particular year, the same are belatedly reported in subsequent years when collected from the client. Prior to the implementation of the Ease of Paying Taxes (EoPT) Act, taxpayers engaged in the sale of services, like construction firms, reported their revenues in the VAT returns upon collection thereof. Hence, these retention fees will only be reported in the VAT returns once the client has remitted them back to the construction firms.

Note, however, that with the implementation of EoPT, this will no longer be an issue since the timing of reporting of revenue for both income tax and VAT is aligned.

To address the timing differences, construction firms are advised to ensure that their accounting software can handle both income tax and VAT reporting requirements seamlessly. This will help in tracking and reconciling revenue recognition accurately. Moreover, don’t wait for the tax investigation but instead conduct monthly reconciliations to identify and address any discrepancies. This proactive approach can help in minimizing timing differences and ensuring compliance. Further, maintain detailed records of all transactions, including the basis for revenue recognition and the timing of invoices issued. This documentation will be crucial in the case of tax investigations by tax authorities.

### TECHNICAL FEES PAID TO NON-RESIDENT FOREIGN ENTITIES

Usually, construction firms have technical support agreements with their non-resident foreign parent company or head office. These technical services typically encompass a wide range of support functions designed to enhance operational efficiency and project execution, such as project management,

engineering support, information technology services, procurement and supply chain management, quality control and assurance, health and safety compliance, and training and development.

In tax investigations, payment of technical service fees to a foreign parent company or head office repeatedly results in deficiency final withholding tax (FWT) and withholding VAT (WVAT) due to non-withholding of tax. Thus, construction firms must have knowledge of the withholding tax rules to avoid this tax finding or to defend their position.

The Philippine Tax Code, as amended, provides that non-resident foreign corporations be taxed on their taxable income from all sources within the Philippines. For rendition of services, the income is sourced within the Philippines if the services are performed in the Philippines, the income is sourced outside the Philippines, hence not taxable.

Recently, the BIR introduced additional guidelines in determining the source of income for cross-border services, which is if the property, activity, or service that produces the income is in the Philippines, hence subject to FWT and WVAT. The three crucial factors to such determination, are: (1) whether the cross-border services are dependent on the successful use, consumption, or utilization by the Philippine purchaser of the service for income to be accrued; (2) whether the performance of the service depends on the facilities located in the Philippines; or (3) whether the particular stages occurring in the Philippines are integral to the overall transaction that the business activity would not have been accomplished without it.

To avoid issues related to the payment of technical service fees, construction firms should first examine all the components of the agreement, taking into account the services to be performed in their entirety, and not single out or compartmentalize one particular activity as the income-producing activity. In addition, construction firms should consider maintaining comprehensive records

of all transactions involving technical service fees, such as the nature of the services, where they are performed, and how the income is sourced. Such records will be invaluable in defending your position during tax investigations. Furthermore, filing a request for confirmation with the BIR of the proper withholding tax treatment of the agreement brings comfort and certainty to the firm.

### CONSTRUCTION-RELATED BENEFITS OF WORKERS

Construction firms typically provide their workers, particularly those working directly on site, with a variety of benefits, such as housing, transportation, industrial safety uniforms, and others. These benefits won’t pass the keen eyes of the RO and will be subjected to tax.

To defend the finding, such benefits which are required by the nature of or necessary to the trade or business of the construction firms, or where such benefit is for the convenience and advantage of the construction firms, shall be exempt from fringe benefits tax or withholding tax on compensation, whichever is applicable. Because construction sites are in various locations, construction workers as well as engineers are given temporary housing or lodging near the site to ensure they carry out the project on time and are accessible immediately. Likewise, transportation is provided for the use of workers in performing their duties because they constantly move from one place to another and transport loads of construction materials and equipment. Hence, these vehicles are essential in carrying out the construction works.

To prove that such benefits are valid and necessary in the construction business and to avoid the disallowance, construction firms must ensure that such expenses are properly substantiated with invoices containing (1) the name of the firm, (2) the amount of the expense being deducted, and (3) the direct connection of the expense being deducted to the development, management, operation, and/or conduct of the trade, business, or profession of the taxpayer.

### 5% CREDITABLE WITHHOLDING VAT ON SALES TO THE GOVERNMENT

Having construction projects with the government sometimes bring headaches to construction firms. Under the tax rules, the government or any of its political subdivisions, instrumentalities, or agencies, including government-owned or -controlled corporations (GOCCs), must, before making payment on account of each purchase of goods or services that are subject to VAT, deduct and withhold a final VAT at the rate of 5% of the gross payment thereof. Provided, beginning Jan. 1, 2021, the VAT withholding system shall shift from final to creditable. Such 5% VAT withheld by the government can be claimed by the construction firms as tax credits if these are evidenced by valid BIR Form No. 2307 issued by the government entities.

Issues arise when such BIR Forms No. 2307 are belatedly issued by the government entities, leading to disallowance of tax credits.

### TAKEAWAY

A BIR audit can be rigorous for construction firms due to the complexity of their operations and the significant amounts of tax at stake. Familiarity with the unique tax peculiarities of the industry, along with thorough preparation that includes complete documentation, accurate accounting, and strict compliance with tax regulations, is critical for successfully navigating a BIR audit and avoiding hefty penalties.

*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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