

Maharlika to finance mine feasibility study for \$76.4M

MAKILALA MINING Co., Inc., a subsidiary of Australia-based Celus Resources Ltd., said it obtained a \$76.4-million loan from the Philippine sovereign wealth fund to support preliminary work on its copper-gold project in the Cordillera Administrative Region.

The company said funds from the Maharlika Investment Corp. (MIC) investment will support its Maalinao-Caigutan-Biyog Project.

MIC will fully finance the updating of the feasibility study and front-end engineering design for the project in Kalinga province, it added.

The miner said the government's investment arm will also "partially" fund early development activities, including main access road construction in coordination with Kalinga province and skills training for the Balatoc community.

"The proceeds of the facility mark a critical milestone in the project's funding, enabling immediate commencement of work with the initial funding amount of \$10 million," the company said.

It said the works will no longer require direct funding from the parent company.

"Discussions on the additional equity funding required are ongoing, given total estimated capital expenditure of the project," Makilala said.

"We look forward to updating investors once binding equity agreements have been finalized."

MIC Chief Executive Officer, Rafael D. Consing, Jr. said the wealth fund envisions the Maalinao-Caigutan-Biyog Copper-Gold project as a benchmark for the government's push to encourage the industry to look "beyond responsible mining."

Kyle Aristophere T. Atienza



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New ADB president takes office

THE Asian Development Bank (ADB) said its new president, Masato Kanda, assumed office on Monday.

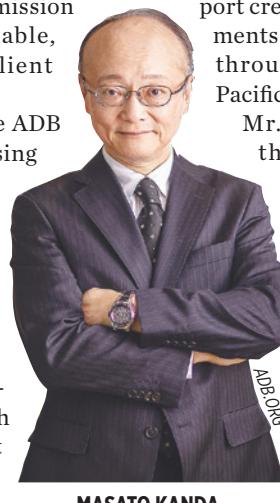
In a statement, the bank said Mr. Kanda, former special advisor to Japan Prime Minister Shigeru Ishiba and a former Vice Minister of Finance, succeeded Masatsugu Asakawa.

He will serve as the ADB's 11th president and takes on the unexpired term of Mr. Asakawa, which ends on Nov. 23, 2026.

"I am deeply honored to take on the role of ADB president at this important moment for our region," Mr. Kanda said.

"With the trust of our 69 members and strong support of our dedicated staff, I am committed to advancing ADB's mission to promote sustainable, inclusive, and resilient growth," he added.

Mr. Kanda said the ADB will respond to pressing development challenges and ensure that it will remain the "partner of choice for the region."



MASATO KANDA

The chairman of the ADB Board of Governors, Fabio Panetta, said the new president brings a wealth of experience and fresh perspective to leading the bank.

"His proven track record in navigating complex financial challenges and fostering international cooperation makes him the ideal leader to guide us as we build upon our strengths and seize emerging opportunities," Mr. Panetta said.

"I am ready to harness the collective expertise within our organization and work closely with our partners to drive transformative change, especially for those most in need," Mr. Kanda said.

"Our focus will be on pragmatic actions that deliver real results, ensuring that our support creates lasting improvements in the lives of people throughout Asia and the Pacific," he added.

Mr. Asakawa assumed the ADB presidency on Jan. 17, 2020, and announced his resignation effective Feb. 23, 2025.

The ADB in September said lending for the Philippines is projected at \$24 billion between 2024 and 2029. — **Aubrey Rose A. Inosante**



FEDEBOD/CDM/WAP/2022

Auto body makers tout safety, air quality benefits in proceeding with PUV upgrades

THE Automotive Body Manufacturers Association of the Philippines (ABMAP) said it supports the Department of Transportation's (DoTr) decision to go forward with modernizing the jeepney fleet, citing the need to improve safety and air quality.

"We commend Secretary (Vicente B.) Dizon's commitment to moving forward with modernization. The transition to Euro 4-compliant vehicles is a necessary step to ensure road safety, reliability, and improved air quality," ABMAP Executive Director Edgar Manuel added.

The DoTr, under Mr. Dizon, its new Secretary, has decided to proceed with the Public Transport

Modernization Program (PTMP), but cited the need to resolve snags like vehicle financing and route rationalization.

"Our members are ready to support operators and cooperatives in acquiring modern, high-quality vehicles that meet global standards," Mr. Manuel added.

Mr. Dizon has said that the program has achieved an 86% consolidation rate under former Transportation Secretary Jaime J. Bautista, the process by which smaller operators are combined to make them more viable entities in terms of acquiring and operating modern jeepneys.

"We need to understand the issues very well. *Masalimuot ang mga issues* (the issues are complex), *hindi lang naman yan simpleng pagpapalit ng mga sasakyang* (it's not as simple as replacing the vehicles)," Mr. Dizon said on the sidelines of the turnover of DoTr leadership on Monday.

Introduced by the DoTr in 2017, the PTMP requires public utility vehicles (PUVs) to meet emission standards and form cooperatives to facilitate efficient fleet management.

"ABMAP believes this initiative will provide long-term benefits for drivers, passengers, and the transport industry as a whole," Mr. Manuel said.

"We understand the concerns of some stakeholders, but modernization is not about eliminating traditional jeepneys — it's about improving them. We need a transport system that ensures a better commuting experience for all Filipinos," he added.

ABMAP has said that the issues regarding financing and vehicle selection can be "resolved through constructive dialogue and collaboration."

It added that the focus must be on refining the program's guidelines, expanding financing options, and ensuring a smoother transition, and not on suspending the program. — **Justine Irish D. Table**

OPINION

When related party transactions and transfer pricing issues surface during tax assessments

LET'S TALK TAX MARIE FE F. DANGIWAN

by the groups' head of operations or head of finance. Another example is the marketing services of the head office in pursuing and winning global clients.

Although the BIR will normally not inquire about the pricing policy of these purchases, the BIR normally construes these services as rendered in the Philippines, and hence, subject to final withholding taxes and withholding VAT.

For cases like these, the taxpayer and its foreign related party should be able to document the nature of these services clearly in their contracts, invoices, and other supporting documents. If possible, a transfer pricing document can be presented to show the nature of these transactions. In cases where these transactions are recurring issues during tax audit and the taxpayer has difficulty in explaining the nature and exemption from tax, if any, it is highly encouraged that an International Tax Affairs Division (ITAD) Ruling be secured from the BIR. In cases where a tax exemption or a lower tax rate under a tax treaty has been availed of by the non-resident, then a Request for Confirmation (RFC) shall be submitted to the BIR. In these ways, it will be much easier to explain to the BIR the taxability of these income payments to non-resident related parties.

From my experience in handling BIR tax audits, below are some related party transactions that have been commonly questioned by the BIR.

1. Services rendered by non-resident foreign corporations

Examples of these are management services such as the services rendered

2. Services rendered to non-resident foreign corporations

A significant number of companies in the Philippines have an arrangement where the Philippine entities sell or render, primarily or exclusively, their products and services to their non-resident foreign related parties.

During a tax audit, the BIR normally inquires about the pricing policy, such as the mark-up rate imposed by the Philippine taxpayer on their related parties, and recomputes the sales that should have been earned by the Philippine taxpayer.

As an example, if the mark-up rate of a BPO company is 5% of cost and expenses, the BIR will pick up the total of cost and expenses from the taxpayer's books and multiply it by 105% to come up with the sales or revenue per tax audit. The excess of the sales or revenue per the BIR's re-computation over the actual amount declared in the income tax return and VAT return will result in undeclared sales or revenue subject to deficiency income tax and VAT. In recent months, the BIR, during tax audits, has been requiring taxpayers to submit the transfer pricing documentation (TPD) covering the services rendered to foreign related parties.

Apparently, the contracts, invoices, and computations are not sufficient for some BIR officers to come up with the analysis on related party transactions. Taxpayers who have not prepared their TPD are forced either to pay penalties or

rush to prepare TPD. On the other hand, taxpayers who have prepared their TPD have generally had much easier dealings with these kinds of issues during tax audit.

3. Allocation of expenses or reimbursement-at-cost

Normally these are expenses incurred by related parties for the benefit of the group. Examples of these are software subscriptions and other technology costs, and allocation of rent and utilities for an office space leased by a related party occupied by two or more related parties. 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. However, depending on the specific facts and circumstances of each case, the party initially paying the expenses on behalf of the group 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.

The issues herein normally include whether the reimbursement received is considered income subject to taxes. Revenue Memorandum Circular (RMC) No. 76-2020 states that it is necessary to submit to the BIR a formal written agreement/contract to prove that these are legitimate expenses, in addition to other documents to substantiate the same (e.g., receipts, proof of payment, etc.). To prove that the transaction is legitimate and necessary is one thing, and to prove that the transaction has

been conducted at arm's length is another thing.

The above transactions are just a few examples of the transactions between related parties. There are many more, such as the use of brands, use of know-how and technology, and the grant of loans or advances, etc., which are normally employed by groups of companies to maximize their operations. These groups should not be disheartened though when related party transactions are questioned during a tax audit as the BIR is also protecting the tax base. Considering the risks and costs of a tax audit, there are several ways to manage these risks, such as confirming the tax consequences of the arrangements through an ITAD Ruling or Request for Confirmation. The role of transfer pricing documentation should also not be played down because those who prepare it now might reduce the burden when the tax audit comes.

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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