



Republic of the Philippines
DEPARTMENT OF FINANCE

Roxas Boulevard Corner Pablo Ocampo, Sr. Street
Manila 1004

DOF OPINION NO. 001.2020

ATTY. MIA CARISSA C. MARTIN

Platon Martinez Flores San Pedro Leaño Law Offices
6th Floor Tuscan Building, 114 V.A. Rufino Street
Legaspi Village, Makati City

**SUBJECT: Request for Review of Bureau of Internal Revenue ITAD
Ruling No. 019-19**

Dear **Atty. Martin**:

This refers to the subject letter dated 27 November 2019 ("Request for Review") which Platon Martinez Flores San Pedro & Leaño Law Offices (Platon Martinez Law), on behalf of its client Koninklijke Luchtvaart Maatschappij N.V. Royal Dutch Airlines (KLM Airlines), filed with this Department to request for review of Bureau of Internal Revenue ("BIR") ITAD Ruling No. 019-19 dated 20 June 2019, which ruled that KLM Airlines is subject to income tax of 1 ½ percent on its Gross Philippine Billings pursuant to paragraph 2(a), Article 8 of the Philippines-Netherlands tax treaty.

In particular, the Request for Review prays for the reversal of the BIR's finding that the exemption from income tax provided to international carriers on the basis of reciprocity under Republic Act (RA) No. 10378¹ and implemented by Revenue Regulations (RR) No. 15-2013 requires that Philippine carriers operating in the Home Country of an international carrier are actually enjoying the income tax exemption. The pertinent portion of BIR Ruling No. 019-19 provides:

"Section 28(A)(3)(a) of the Tax Code and Section 4.2(B) of Revenue Regulations No. 15-2013 strictly require that reciprocity

¹ "An Act Recognizing the Principle of Reciprocity as Basis for the Grant of Income Tax Exemptions to International Carriers and Rationalizing Other Taxes Imposed Thereon by Amending Sections 28(A)(3)(A), 109, 118 And 236 of the National Internal Revenue Code (NIRC), as amended, and For Other Purposes"

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to be invoked, the Philippine air carriers operating in the Netherlands must actually be enjoying tax exemption therein. This cannot be determined for the reason that there are no Philippine air carriers operating in international traffic in the Netherlands.”

On the other hand, KLM Airlines disagrees with the above ruling and asserts in its Request for Review that KLM Airlines is entitled to the exemption under RA No. 10378 as the law does not require Philippine air carriers to “actually enjoy” income tax exemption or actually operate in the home country as a prerequisite to reciprocity and the principle of reciprocity applies for as long as the law of each country extends income tax exemption to the international carriers of the other country.

It is imperative to discuss the procedural aspect of the Request for Review.

Section 3 of DOF Department Order (“DO”) No. 007-02 provides that a taxpayer who receives an adverse ruling from the Commissioner of Internal Revenue (“CIR”) may seek its review by the Secretary of Finance within 30 days from the date of receipt of said ruling. The subject BIR Ruling was received by Platon Martinez Law on behalf of KLM Airlines on 30 July 2019. Hence, it had until 29 August 2019 to file the subject Request for Review.

However, instead of filing directly the Request for Review with the Secretary of Finance, it filed a Motion for Reconsideration with the CIR on 16 August 2019. The BIR then replied, through a letter dated 11 October 2019, stating that the ruling was already issued and signed by the CIR and that it is the Secretary of Finance who has the authority to review the rulings issued by the CIR. It was only on 27 November 2019 that the subject Request for Review was filed with the Secretary of Finance.

We note that the filing of a Motion for Reconsideration with the CIR does not toll the period for filing an appeal with the Secretary of Finance. It is imperative to highlight that the adverse ruling was already a final adverse decision of the CIR, which is the decision subject to appeal with the Secretary of Finance.

To reiterate, DOF DO No. 007-02 provides that the 30-day period shall run from the day the taxpayer receives the adverse ruling from the CIR. These are mandatory requirements, the failure to comply with any of which, is sufficient basis for the Secretary of Finance to dismiss with prejudice the request for review.



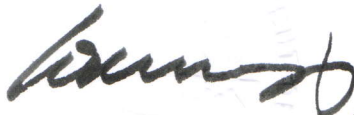
The right to appeal is neither a natural right nor a part of due process, except where it is granted by statute, in which case, it should be exercised in the manner and in accordance with the provisions of law. In other words, appeal is a right of statutory and not of constitutional origin. **The perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but also jurisdictional.**

Hence, on the basis of the foregoing, we are constrained to *deny* the subject Request for Review for failure to file within the reglementary period provided under DOF Department Order No. 007-02.

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be disclosed that the facts are different, then this ruling shall be considered as null and void.

Thank you.

Sincerely yours,



CARLOS G. DOMINGUEZ

Secretary of Finance

JAN 20 2020



CC **Commissioner Caesar R. Dulay**
Bureau of Internal Revenue