



Republic of the Philippines
DEPARTMENT OF FINANCE

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DOF Opinion No. 004.2022

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**SUBJECT : Request for Review of Bureau of Internal Revenue
Ruling ITAD No. 013-21 dated 19 May 2021**

Dear Atty. Martin:

This refers to your letter dated 28 June 2021 ("Request for Review"), which you filed with this Department on behalf of Deutsche Gesellschaft fur Internationale Zusammenarbeit ("GIZ") to request the review of Bureau of Internal Revenue ("BIR") Ruling ITAD No. 013-21, which denied for lack of legal basis the request of GIZ for exemption from VAT and ad valorem on its local purchases of two (2) 2021 Toyota Hi-Lux 4x4 2.4J Diesel M/T, one (1) Toyota Innova 2.8 J diesel MT, and one (1) Toyota Rush 1.5G AT 7S.

The Government of the Republic of the Philippines and the Federal Republic of Germany entered into the *Agreement between the Government of the Federal Republic of Germany and the Government of the Republic of the Philippines Concerning Technical Co-operation* ("Technical Cooperation Agreement" or "TCA" or the "1971 Agreement") on 07 September 1971 to promote common interests in the technical and economic development of both states.

Under the 1971 Agreement, Germany committed to (i) promote the establishment of training centers and model institutions by dispatching German teachers and technicians and providing equipment; (ii) charge consultants with making studies concerning individual projects; (iii) dispatch experts for special tasks to the Philippines; (iv) place advisers at the disposal of the Philippine Government; and (v) support cooperation between the two countries in the field of education and training, among others.

A handwritten signature in black ink, appearing to be the initials "CA" followed by a flourish.

In return, the Philippines undertook, among others, to exempt from harbour dues, import and export duties, and all other public charges the articles supplied on behalf of the German Government for the projects.

Subsequently, the 1971 Agreement was amended in 1987 and again in 2002. The most salient amendment made in 2002 concerns Paragraph 4 (a) of the 1971 Agreement. **As amended, the said provision requires the Philippine Government to exempt materials and motor vehicles supplied for their [GIZ] use from taxes, licenses, harbour duties, import and export duties, and other public charges, as well as storage fees, and ensure that such material is cleared by customs without delay (the "2002 Amendment").**

On 17 December 2018, the German Government proposed creating a cooperation project entitled *Improved Ecosystem Services and Reduced Vulnerability to Climate Change through Ecosystem-based Management and Application of Ecosystem Values in Two River Basins in the Philippines* ("E2RB Project").

Under the proposal, the Philippine Government shall, by itself or through its implementing agencies, assume all import and export duties, harbour dues, and other public charges imposed by the Philippines on the materials, motor vehicles, goods, items of equipment, and spare parts imported on behalf and at the expense of the German Government and used for the E2RB project.

Further, the Philippine Government also undertakes to:

- i Assume all direct taxes imposed by the Philippines on GIZ in connection with the conclusion and fulfilment of the implementation and financing agreements for the E2RB project; and
- ii **Assume VAT or any similar indirect taxes imposed by the Philippines solely on goods and services procured in connection with the conclusion and fulfilment of the implementation and financing agreements for the E2RB project at the request of GIZ.**

The Philippine Government, through **DFA Note No. 19-0474** dated 28 January 2019, accepted all of the terms and conditions proposed by the German Government. As such, an Implementation Agreement was entered into by GIZ



and the Department of Environment and Natural Resources (“DENR”) on 11 May 2021.

Similarly, the Philippine and German Governments agreed to pursue another project, entitled, *South-South Collaboration on Climate Information and Services: Building a Knowledge-management and Learning Platform for the Philippines and the Climate Change Vulnerable Forum* (“South-South Collaboration Project”). This project, as contained in **DFA Note No. 19-1489** dated 08 April 2019, contains similar, if not the same, terms and conditions as that of the E2RB Project, such that the Philippine Government has agreed to assume the following:

- i Import and export duties, harbour dues, and other public charges imposed by the Philippines on the materials, motor vehicles, goods, items of equipment, and spare parts imported on behalf and at the expense of the German Government and used for the said project;
- ii Direct taxes imposed by the Philippines on GIZ in connection with the conclusion and fulfilment of the implementation and financing agreements for the South-South Collaboration Project; and
- iii **VAT or any similar indirect taxes imposed by the Philippines solely on goods and services procured in connection with the conclusion and fulfilment of the implementation and financing agreements for the South-South Collaboration Project at the request of GIZ.**

Subsequently, GIZ entered into an Implementation Agreement dated 04 March 2020 with the Climate Change Commission (“CCC”).

The Implementation Agreements for the E2RB and South-South Collaboration projects mandated GIZ to provide up to three (3) motor vehicles for the former and one (1) motor vehicle for the latter. GIZ then submitted to the DFA, through the Embassy of the German Government, a request for exemption on VAT on the motor vehicles that it intends to purchase.

On 20 October 2020, the DFA issued Note No. 2020-4980, which approved the request of GIZ for the tax-free local purchase of one (1) unit of a 2020 Toyota Rush 1.5G for the South-South Collaboration Project.



On 26 November 2020, the DFA likewise approved, through Note No. 2020-5586, the request of GIZ for the tax-exempt purchase/acquisition of two (2) units of Toyota Hilux 4x4 for the E2RB project.

Thereafter, GIZ purchased four (4) motor vehicles for use in the implementation of the said projects. On 11 December 2020, the DFA then endorsed to the BIR, through the DOF, GIZ's request for VAT exemption on its purchase of motor vehicles. On 27 April 2021, the DENR issued a certification that it will pay all customs duties and taxes applicable to the E2RB project.

The Commissioner of Internal Revenue ("CIR"), on 19 May 2021, issued BIR Ruling No. ITAD 013-21, where he denied the request of GIZ for exemption from VAT and ad valorem tax on its local purchase of motor vehicles on the ground that there is no legal basis to grant the same. In more specific terms, the BIR ruled:

Contrary to the allegations of GIZ, the 2019 E/N granted no tax exemption to GIZ and did not provide for the VAT exemption of the subject motor vehicle. The foregoing provisions relate to the tax obligations assumed by the Philippine Government or its agencies charged with the implementation of the Projects, *i.e.*, the Department of Environment and Natural Resources (DENR) and the Climate Change Commission (CCC), upon request of the GIZ, and not to the VAT exemption of GIZ or of the sale transaction.

Clearly, paragraph 9 states that the Philippine Government may assume the payment of VAT imposed on the goods and services procured in connection with the implementation of the projects only if so requested by the GIZ. In this case, the GIZ failed to present any documentary evidence to prove that the GIZ requested the Philippine Government, the DENR or CCC to assume the VAT imposed on the subject motor vehicles. Without such request, the Philippine Government cannot be made liable for the said tax.

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In view of all the foregoing, the request for exemption from VAT and ad valorem tax on the local purchase of two (2) 2021 Toyota Hi-Lux 4x4 2.4J Diesel M/T, one (1) Toyota Innova 2.8 J diesel MT,



and one (1) Toyota Rush 1.5G AT 7S is denied for lack of legal basis. Accordingly, the GIZ shall pay the corresponding indirect taxes on the subject motor vehicles.

On the other hand, in your Request for Review, you argued that:

- a. The Government of the Republic of the Philippines, through the DFA and DENR, assumed the obligation of paying all taxes in relation to the E2RB and the South-South Collaboration Project;
- b. The DFA Notes dated 28 January 2019 and 08 April 2019, which contain provisions specific to the E2RB and South-South Collaboration Projects, prevail over the general provisions of the 1971 Agreement, as amended; and
- c. The National Internal Revenue Code recognizes VAT exemptions arising from international agreements.

Issue

The sole issue that needs resolution in the present case is whether GIZ is indeed exempt from VAT on its local purchase of motor vehicles pursuant to the 1971 Agreement and subsequent Exchange of Notes ("E/Ns").

Ruling

This Office rules in favor of the BIR insofar as GIZ is not exempt from VAT on its purchase of the motor vehicles for the following reasons:

- i The 2019 E/Ns do not provide for a tax exemption provision similar to the one contemplated or provided in the May 2002 E/N, which amended the 1971 TCA. The provisions in the 2019 E/Ns clearly intended a tax assumption scheme; and
- ii GIZ cannot rely on the earlier BIR rulings because they were decided using the May 2002 E/N. It is worthy to recall that the E2RB and South-South Collaboration Projects only came about in 2019 when the Philippine Government, through the DFA, issued DFA Notes 19-0474 and 19-1489, to accept the proposal of the German Government.



The E/Ns clearly provide for a tax assumption clause

GIZ, through counsel, alleges that the purchase by GIZ of motor vehicles for use in the implementation of the E2RB and South-South Collaboration projects are EXEMPT from VAT.

However, we are constrained to take the position that the E/Ns clearly provide for a tax assumption mechanism for the purchases of GIZ.

The E/Ns of both the E2RB (Diplomatic Note 19-0474) and South-South Collaboration Projects (Diplomatic Note 19-1489) provide for similar, if not the same, **tax assumption provisions**, to wit:

At the request of GIZ, the Government of the Republic of the Philippines, shall, by itself or through its implementing agencies, assume value-added tax or any similar indirect taxes imposed by the Republic of the Philippines solely on goods and services procured in connection with the conclusion and fulfilment of the implementation and financing agreements referred to in paragraph 5. Any specific consumption taxes levied solely on goods and services procured shall, on request, be assumed by the Government of the Republic of the Philippines, by itself or through its implementing agency. (Underscoring ours)

In *Mitsubishi Corporation – Manila Branch v. Commissioner of Internal Revenue*,¹ the Supreme Court discussed the concept of tax assumption in comparison to tax exemption, to wit:

To “assume” means “[t]o take on, become bound as another is bound, or put oneself in place of another as to an obligation or liability.” This means that the obligation or liability remains, although the same is merely passed on to a different person. In this light, the concept of an assumption is therefore different from an exemption, the latter being the “[f]reedom from a duty, liability or other requirement” or “[a] privilege given to a judgment debtor by law, allowing the debtor to retain [a] certain property without liability.” (Emphasis ours)

¹ G.R. No. 175772, June 5, 2017.



It is worthy of reiterating that a tax exemption is a grant of immunity from the payment of tax. It is construed in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority.² It can only be given force when the grant is clear and categorical.³ There is no liability to pay taxes in tax exemption. The assumption of tax liabilities, on the other hand, does not provide for immunity from the payment of taxes. It merely allows the shifting of the burden of taxation by allowing another entity to shoulder the tax liability by means of charging or reimbursement. Hence, taxes are still required to be paid.⁴

The E/Ns are clear. The Philippine Government or through its implementing agencies (i.e., DENR and CCC as the case may be), at the request of GIZ, commits to assume “value-added tax or any similar indirect taxes imposed by the Republic of the Philippines solely on goods and services procured in connection with the conclusion and fulfilment of the implementation and financing agreements.”

In fact, in addition to assuming VAT or similar indirect taxes, the Philippine Government likewise agreed to assume other tax types, including:

- i. all import and export duties, harbour dues, and other public charges imposed by the Republic of the Philippines on the materials, motor vehicles, goods, items of equipment, and spare parts xxx;⁵ and
- ii. all direct taxes imposed by the Republic of the Philippines on GIZ in connection with the conclusion and fulfilment of the implementation and financing agreements xxx;⁶

As a necessary consequence, GIZ is not exempt from VAT on its purchase of vehicles for the projects, as the liability to pay VAT still exists. However, pursuant to the tax assumption clause in the relevant E/Ns, the Philippine Government, through the implementing agencies, shall shoulder the burden of such tax liability.

² *CIR v. Visayan Electric Company*, G.R. No. L-22611, May 27, 1968.

³ *CIR v. Rio Tuba Nickel Mining Corporation*, G.R. Nos. 83583-84, September 30, 1991.

⁴ BIR Ruling ITAD No. 023-17, July 13, 2017.

⁵ Paragraph 7, Notes 19-0474 and 19-1489.

⁶ Paragraph 8, Notes 19-0474 and 19-1489.



GIZ cannot rely on previous BIR rulings exempting it from the payment of taxes

GIZ maintains that the BIR has consistently upheld the VAT exemption of GIZ on the purchase of motor vehicles, as can be gleaned from BIR rulings beginning in 2013. Indeed, the BIR has in fact consistently upheld the VAT exemption of GIZ on its purchase of motor vehicles until 2019. In these past rulings, the BIR relied on the 1971 TCA and its amendment in 2002, where the purchase of motor vehicles by GIZ was exempt from taxes, to wit:

The Government of the Republic of the Philippines shall make the following contributions:

It shall:

(a) exempt the material and motor vehicles supplied for the Office from taxes, licenses, harbour duties, import and export duties and other public charges, as well as storage fees, and ensure that such material is cleared by customs without delay. The aforementioned exemptions shall, with regard to value added tax (VAT), also apply to material and services (including consulting services) procured in the Republic of the Philippines, as well as to the renting of office premises and accommodation for seconded experts;

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The subsequent 2019 E/Ns, on the other hand, modified the earlier agreements when the tax relief that was granted was in the form of a tax assumption, where the Philippine Government shoulders the tax liability of GIZ on the E2RB and South-South Collaboration projects. As earlier discussed, the clear and unmistakable language of the E/Ns show that what the parties intended was a tax assumption instead of an exemption. Thus, the BIR acted prudently when it ruled that the purchase by GIZ of the motor vehicles was not exempt from VAT.

In connection to this, we submit that GIZ should coordinate closely with the BIR and the implementing agencies for the proper implementation of the tax assumption mechanism under the subject E/Ns.



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 null and void.

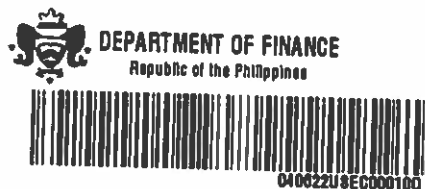
Thank you.

Very truly yours,


CARLOS G. DOMINGUEZ

Secretary of Finance

APR 04 2022



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

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