



Republic of the Philippines  
**DEPARTMENT OF FINANCE**

Roxas Boulevard Corner Pablo Ocampo, Sr. Street  
Manila 1004

DOF Opinion No. 015.2022

**ATTY. MIA CARISSA C. MARTIN**

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SUBJECT : **Request for Review of Bureau of Internal Revenue Ruling  
ITAD No. 012-22 dated 1 July 2022**

Dear **Atty. Martin**:

This refers to your letter dated 5 August 2022 ("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. 012-22, which denied for lack of legal basis the request of GIZ for exemption from VAT and *ad valorem tax* on its local purchase of one (1) unit 2022 Toyota Fortuner 2.8L 4x4 LTD AT 2T to be used for a technical cooperation project funded by GIZ.

The Request for Review prays for the reversal of the BIR's findings that the local purchase of a motor vehicle to be used for the project funded by GIZ is not exempt from VAT, hence, GIZ shall pay VAT and other indirect taxes on its purchase. The particular provision in BIR Ruling ITAD No. 012-22 states:

"Nothing in the abovementioned provisions exempts the sale of the subject motor vehicle from VAT. Article 4(5) of the TCA refers to articles supplied on behalf of the Government of the Federal Republic of Germany for the projects, while Article 5 thereof covers, among others, imported motor vehicle. A cursory reading of paragraph 4(a) of the 2002 Exchange of Notes, on the other hand, reveals that the first sentence deals with the tax exemption of imported materials and motor vehicles while the second sentence deals with the exemption from VAT of material and services, including consultancy services, procured in the Philippines. The latter sentence excluded the locally purchased motor vehicles from the list of VAT-exempt goods and services procured in the Philippines. Applying the familiar maxim, *expression unius est exclusion alterius*, the express mention of one person, thing, or consequence implies the exclusion of all others.

In view of the foregoing, the request for exemption from VAT and *ad valorem tax* on the local purchase of a 2022 Toyota Fortuner 2.8L 4x4 LTD AT 2T is denied

for lack of legal basis. Accordingly, the GIZ shall pay the corresponding indirect taxes on the subject motor vehicle.”

On the other hand, in the Request for Review, GIZ prayed for the following:

- a. The BIR Ruling ITAD No. 012-22 be reversed and set aside and to confirm that the TCA and the 2002 E/N free GIZ of the burden to pay the VAT, amounting to PhP260,625.00, and other taxes on the purchase of the subject 2022 Fortuner as an article free of public charge and a material good intended for use in the SPADe project; and
- b. It be declared that GIZ is also exempt from any donor’s tax that may be due upon the donation of the vehicle to MinDA.

The issue that needs resolution in the present case is whether GIZ is exempt from VAT on its local purchase of motor vehicle pursuant to the TCA and subsequent Exchange of Notes (E/N).

### **Ruling**

This Office rules in favor of the BIR insofar as GIZ is not exempt from VAT on its purchase of the motor vehicle.

The GIZ, in its request for a BIR Ruling for an exemption from VAT and ad valorem tax on its local purchase of a motor vehicle, submitted the TCA and the 2002 E/N with the BIR as its reference documents. No new E/N or Implementation Agreement specific to the SPADe project was provided for review.

Applying the 2002 E/N, paragraph 4(a) provides for certain tax exemptions, 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; xxx”

The Commissioner of Internal Revenue (“CIR”) ruled that the first sentence of paragraph 4(a) of the 2002 E/N deals with the tax exemption of **IMPORTED** materials and motor

vehicles while the second sentence deals with the exemption from VAT of materials and services, including consultancy services, procured in the Philippines. It is further explained by BIR that the second sentence excluded locally purchased motor vehicles from the list of VAT-exempt goods and services procured in the Philippines, therefore, excluded from VAT exemption.

It is a settled rule in a long line of cases that tax exemptions must be couched in clear language and are strictly construed.<sup>1</sup> If an exemption is found to exist, *it must not be enlarged by construction*, since the reasonable presumption is that the state has granted in express terms all it intended to grant at all.<sup>2</sup>

In *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*<sup>3</sup>, it is ordained that:

“A person claiming exemption from tax payments has the burden of justifying the exemption by words too plain to be mistaken and too categorical to be misinterpreted, it is never presumed nor be allowed solely on the ground of equity. These exemptions, therefore, must not rest on vague, uncertain or indefinite inference, but should be granted only by a clear and unequivocal provision of law on the basis of language too plain to be mistaken.”

Applying this principle, the provisions of the 2002 E/N shall be strictly construed against the taxpayer. Thus, this Office believes that the BIR acted prudently when it ruled that the purchase by GIZ of the 2022 Toyota Fortuner 2.8L 4x4 LTD AT 2T was not exempt from VAT.

We reiterate that it is expressed in the German Embassy Note No. 236/2020 that all the services of the German side can only be provided after the exchange of notes has come into force and the implementation agreement with GIZ has been concluded. However, no implementation agreement and new E/N apart from the DFA Note No. 2020-5172 has been presented for review.

It is also worth noting that in the recent technical cooperation projects between the Government of the Republic of the Philippines and the Federal Republic of Germany such as the 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”) and the project entitled “*South-South Collaboration on Climate Information and Services: Building a Knowledge-*

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<sup>1</sup> Commissioner of Internal Revenue v. Philippine Long Distance Telephone Company, G.R. No. 140230 dated December 15, 2005, as cited in Thunderbird Pilipinas Hotels and Resorts, Inc. v. Commissioner of Internal Revenue, G.R. No. 211327 dated November 11, 2020.

<sup>2</sup> *Ibid.*

<sup>3</sup> G.R. No. 188497 dated 25 April 2012, as cited in National Grid Corporation of the Philippines v. Central Board of Assessment Appeals, G.R. Nos. 218289-90 (Notice) dated 23 June 2021.

management and Learning Platform for the Philippines and the Climate Change Vulnerable Forum" ("South-South Collaboration Project"), the Exchange of Notes issued specific to these projects, DFA Note No. 19-0474 and DFA Note No. 19-1489, respectively, have similar provisions providing that the Government of the Philippines has agreed to assume the following:

- a. Direct taxes imposed by the Philippines on GIZ in connection with the conclusion and fulfillment of the implementation and financing agreements for the South-South Collaboration Project and the E2RB project; and
- b. VAT or any similar indirect taxes imposed by the Philippines solely on goods and services procured in connection with the conclusion and fulfillment of the implementation and financing agreements for the South-South Collaboration Project and the E2RB project at the request of GIZ.

Given these considerations, we agree with the BIR that the GIZ cannot invoke exemption under the 2002 E/N of its purchase of the 2022 Toyota Fortuner 2.8L 4x4 LTD AT 2T. From the afore-cited rules and jurisprudence, strict construction is applied when there is uncertain inference of tax exemption.

As regards GIZ's request to exempt it from donor's tax should it donate the subject motor vehicle to partner agency MinDA, this Office is constrained not to make any ruling on this issue since this is not ruled upon by the BIR in the assailed Ruling for it to be a subject of the request for review.

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.

Sincerely yours,

**BENJAMIN E. DIOKNO**  
Secretary of Finance

SEP 26 2022



**CC: Commissioner Lilia Catris Guillermo**  
Bureau of Internal Revenue