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Clarifying VAT exemptions for domestic and intl transport operations

At last, the Bureau of Internal Revenue (BIR) has clarified the exemptions granted by law to international carriers. Section 109 of the National Internal Revenue Code (NIRC), as amended, provides specific transactions that are exempt from value-added tax (VAT). Among these exempt transactions are those relating to international shipping and air-transport operations, such as:

1. Transport of passengers by international carriers;
2. Sale, importation or lease of passenger or cargo vessels and aircraft, including engine, equipment and spare parts thereof for domestic or international transport operations. Pursuant to Revenue Regulations (RR) 16-2005, this shall be VAT-exempt if the vessel, including its engine and spare parts, is 150 tons and above, and subject to certain age limit requirements; and

3. Importation of fuel, goods and supplies by persons engaged in international shipping or air-transport operations. RR 16-2005 clarifies that these shall be used exclusively for international shipping or air-transport operations to be exempt from VAT.

In addition to the above exemption, RR 16-2005 expanded the exemption by providing that the importation of life-saving equipment, machinery, spare parts, navigational equipment, steel plates and other metal plates to be used for shipping transport operations, and for the construction, repair renovation or alteration of merchant marine vessels for domestic trade are also exempt from VAT. On December 28, 2015, the BIR issued RR 15-2015 to amend certain provisions of RR 16-2005. Under the new RR, the following transactions relating to transport operations are exempt from VAT:

1. The transport of passengers and cargo by international carriers doing business in the Philippines;
2. The sale, importation or lease of passenger or cargo vessels and aircraft, engine, equipment and spare parts for domestic and international transport operations; and
3. The importation of fuel, goods and supplies by persons engaged in international shipping or air-transport operations.

RR 15-2015 clarified that the transport of both passengers and cargo by international carriers doing business in the Philippines are exempt from VAT.

The transport of passengers by international carriers is exempt from VAT based on Section 109 of the NIRC, as amended. On the other hand, the transport of cargo by international carriers is exempt from VAT since such transaction is already subject to common carrier's tax. This is so since the NIRC provides that services, which have already been subject to percentage tax, such as common carrier's tax, are already exempt from the imposition of VAT.

The RR also specifically provides that international carriers who are exempt from VAT on their transport of passengers and cargo, are not allowed to register for VAT purposes.

The new RR removed the provisions on exemption of importations of life-saving equipment, machinery, spare parts, navigational equipment, steel plates and other metal plates to be used for shipping transport operations, and for the construction, repair renovation or alteration of merchant marine vessels for domestic trade, which were considered exempt under RR 16-2005.

As for the sale of vessels and aircraft, its exemption are now subject to the requirements on restriction on vessel importation and mandatory vessel retirement program set by the Marina, but without specifying any weight requirement or other conditions, which was previously required under RR 16-2005.

However, the new RR retained the exemption on importation of fuel, goods, and supplies by persons

engaged in international shipping or air transport operations, but only if the fuel, goods, and supplies imported are to be used exclusively for international shipping or air-transport operations, such that the transport is from a port in the Philippines, going directly to a foreign port, or vice versa, without docking or stopping anywhere else in the Philippines, unless to load or unload passengers or cargo to and from abroad.

Any portion of the imported fuel, goods, and supplies used domestically will be subject to 12 percent VAT.

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