REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
National Office Building
Quezon City

RA No. 7916, as amended by RA No. 8748; Revenue Regulations No. 20-2002; PEZA Memorandum Circular No. 2005-032		OT- 009-2023 FEB 16 2023

Person to Contact: Chief, Law Division
Tel Nos. 926-55-36 / 927-09-63

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5th Avenue corner 26th St.
Bonifacio Global City, 1634 Taguig

Attention: **Atty. Alvin Noel Saldana**
Principal, Tax and Corporate Service

Gentlemen:

This refers to your request on behalf of **B/E Aerospace B.V. – Philippine Branch** (the "Company"), for confirmation of your opinion that the realized foreign exchange gain arising from transactions directly attributable to the registered activities of the Company should be covered by the same income tax incentive granted by Philippine Economic Zone Authority (PEZA) to the Company pursuant to Revenue Regulations No. 20-2002 and PEZA Memorandum Circular No. 2005-032.

It is represented that the Company is a resident foreign corporation with license to do business in the Philippines, and is registered with the Securities and Exchange Commission (SEC) under License No. on February 2, 2010 primarily to develop, manufacture, sell (wholesale), distribute and market aerospace related products and solutions. It is also registered with the PEZA in 2010 as an Ecozone Export Enterprise at the First Philippine Industrial Park – Special Economic Zone (FPIP-SEZ) with Certificate of Registration Number All its projects are granted tax incentives and is enjoying the benefit of income tax holiday (ITH) for its new projects while other projects are enjoying the five percent (5%) preferential tax rate based on the gross income earned. In its Registration Agreement and Supplemental Agreements with PEZA, the following are the registered activities of the Company:

1. The manufacture and sale of commercial aircraft galleys and the importation of raw materials, machinery, equipment, tools, goods, wares, articles, or merchandise directly used in its registered operations;
2. The manufacture of commercial ovens for installation in aircraft;
3. The manufacture, sale, distribution and marketing of beverage makers and rails for aircraft;

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4. The manufacture of refrigeration and chiller equipment for aircrafts;
5. The manufacture, assembly, sale and distribution of passenger service units, oxygen systems and other aircraft interior components;
6. To engage in repair, maintain, service and modify aerospace related products such as ovens, beverage, makers, refrigeration and chillers for installation to aircraft;
7. The grant of pioneer status to its (a) manufacture and sale of commercial aircrafts galleys, (b) manufacturing, sale, distribution and marketing of commercial aircraft lavatories and (c) manufacture, sale, distribution and marketing of beverage makers and rails for aircraft;
8. The grant of pioneer status to its manufacture of refrigeration and chiller equipment for aircrafts; and
9. The manufacture, assembly sale, distribution and marketing of seating spare parts and other aircraft interior components.

As a PEZA export enterprise, it normally transacts with suppliers and clients using foreign currencies, such as purchase of raw materials, equipment and supplies used in the production and sales transactions. As a result, foreign exchange gains or losses are realized by the Company due to the fluctuations in values of foreign exchange on the date of recording and date of actual settlement.

In this regard, you now request confirmation of your opinion that the realized foreign exchange gains derived by the Company from its registered activities shall be subject to the same income tax incentives granted by PEZA.

In reply, ***Section 24 of Republic Act (RA) No. 7916[1], as amended by RA No. 8748[2]***, provides for the exemption from all taxes of PEZA-registered enterprises, *viz*:

> *"SEC. 24. Exemption from National and Local Taxes. — Except for real property taxes on land owned by developers, no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE. In lieu thereof, five percent (5%) of the gross income earned by all business enterprises within the ECOZONE shall be paid and remitted as follows:*
>
> *xxx xxx xxx"*

In connection therewith, ***Section 1 of Revenue Regulations No. 20-2002*** provides the tax treatment of income from registered activities of PEZA-registered enterprises, to wit:

> *"SECTION 1. Tax Treatment. — Income derived by an enterprise registered with the Subic Bay Metropolitan Authority (SBMA), the Clark Development Authority (CDA), or the **Philippine Economic Zone Authority (PEZA) from its registered activity/ies shall be subject to such tax treatment as may be specified in its terms of registration (i.e., the 5% preferential tax rate, the income tax holiday, or the regular income tax rate, as the case may be)**. Nonetheless, whatever the tax treatment of said enterprise with respect to its*

[1] The Special Economic Zone Act of 1995
[2] An Act Amending RA No. 7916

registered activity/ies, income realized by such registered enterprise that is not related to its registered activity/ies shall be subject to the regular internal revenue taxes, such as the 20% final income tax on interest from Philippine Currency bank deposits and yield or any other monetary benefit from deposit substitutes, and from trust funds and similar arrangements, the 7.5% tax on foreign currency deposits and the 5%/10% capital gains tax or ½ % stock transaction tax, as the case may be, on the sale of shares of stock." (Underscoring and emphasis ours)

Corollary, PEZA issued ***Memorandum Circular No. 2005-032*** to clarify that the tax treatment of foreign exchange gains shall depend on the activities from which these arise, thus:

"The tax treatment of foreign exchange (forex) gains shall depend on the activities from which these arise. ***Thus, if the forex gain is attributed to an activity with income tax incentive (Income Tax Holiday or 5% Gross Income Tax), said forex gain shall be covered by the same income tax incentive.*** *On the other hand, if the forex gain is attributed to an activity without income tax incentive, said forex gain shall likewise be without income tax incentive, i.e., therefore, subject to normal corporate income tax."* (Underscoring and emphasis ours)

Applying the aforequoted provisions in the instant case, the tax treatment of foreign exchange gains of the Company shall depend on the activities from which they arise. Thus, the realized foreign exchange gains attributable to the registered activities of the Company shall be covered by the same income tax incentive (i.e., income tax holiday and/or 5% gross income tax, whichever is applicable) as stated in the terms and conditions granted by PEZA. Meanwhile, if the foreign exchange gain is not attributed to its registered activities, such gain shall be subject to the regular income tax rate.

This ruling is issued on the basis of the facts as represented. However, if upon investigation it shall be disclosed that the actual facts are different, then this ruling shall be without force and effect insofar as the herein parties are concerned.

Very truly yours,

ROMEO D. LUMAGUI, JR.
Commissioner of Internal Revenue
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