REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Section 32 (B) (7) (b) and Section 105 of the of the Tax Code of 1997, as amended
VAT- 031-2023
APR 14 2023

DEPARTMENT OF AGRICULTURE
Office of the Secretary
Elliptical Road, Diliman
Quezon City

Attention: **ATTY. ARMANDO R. CROBALDE, JR**
Director IV

Gentlemen:

This refers to your Memorandum dated February 13, 2023 addressed to the Presidential Management Staff (PMS), providing for a legal review of the sale to the general public of the donated seized smuggled agricultural products by the Department of Agriculture ("DA").

Item 7 of the aforesaid Memorandum requires coordination with the Bureau of Internal Revenue ("BIR") to determine the taxability of the abovementioned sale, viz:

> *"7. Coordination with the Bureau of Internal Revenue ("BIR") is needed to determine* ***if the gain based on sale is tax exempt or not****, and whether the DA still needs to register with the BIR for the conduct of trade or comply with certain conditions prior to the conduct of sale."*

In the light of the foregoing, we render our opinion as follows:

Income Tax liability of the DA on profit gained from selling the donated smuggled agricultural products

Section 32 (B) (7) (b) of the National Internal Revenue Code ("NIRC"), as amended, excludes from the gross income and exempts from income tax, the income derived from the discharge of any essential governmental functions accruing to the Government of the Philippines or to any of its political subdivisions, viz:

> "(B) *Exclusions from Gross Income.* — The following items shall not be included in gross income and shall be exempt from taxation under this Title:

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"(b) *Income Derived by the Government or its Political Subdivisions.* — **Income derived from any public utility or from the exercise of any essential governmental function** accruing to the Government of the Philippines or to any political subdivision thereof."

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It is necessary then to determine whether or not the income from the sale of the donated seized smuggled agricultural products to the general public was derived in the performance of its essential governmental function.

It is to be noted that there is no hard and fast rule for purposes of determining the true nature of an undertaking or function of a government agency. It has been established though that an instrumentality of the government which acts for the purpose of accomplishing government policies and objectives and extending essential services to the people performs governmental functions. [1]

In this case, the sale of the donated seized smuggled goods is intended to promote market price stability and to give the general public access to reasonably priced goods. The same is in accordance with one of the mandates of the DA to oversee the regulation of food production and supply as provided in Section 3, Title IV, Chapter 1 of Administrative Code of 1987, viz:

"SECTION 3. Powers and Functions. -- The Department shall:

(2) Be responsible for the planning, formulation, execution, **regulation**, and monitoring of programs and activities relating to agriculture, **food production and supply;"**

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Based on the above, it is irrefutable that the sale of the donated agricultural products is for the purpose of fulfilling a government policy and objectives, which is to stabilize prices in the market and to provide the consuming public access to reasonable priced agricultural commodities and thus, falls under the purview of a governmental function.

From the foregoing, this Office is of the opinion that any income by the DA from the sale of donated smuggled goods is considered derived from carrying out an essential governmental function, and therefore, is not considered as part of its gross income, thus, exempt from income tax.

[1] Peoples' Homesite and Housing Corporation vs. Court of Industrial Relations, 150 SCRA 296

VAT-031-2023
APR 14 2023

VAT liability on the profit gained from selling the donated smuggled agricultural products

Section 105 of the NIRC of 1997, as amended, provides that any person who, in the course of trade or business, sells barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code.

The phrase "in the course of trade or business" is a key element in determining the applicability of VAT. It refers to any activity conducted by a person engaged in a trade or business, which is carried out on a regular or habitual basis. This implies that the person is engaged in a commercial activity with the intent of generating profits.

In the present case, the sale by the DA of donated seized smuggled agricultural products is not a regular or habitual activity. Rather, it is an event conducted to stabilize market prices and provide affordable agricultural products to the public. The sale is not aimed at generating profit, but rather fulfilling the mandate of the government to ensure food security and promote market stability.

Given the above, the absence of regularity in the sale of donated goods means that it does not meet the criteria for VAT liability. Therefore, the sale of donated goods does not fall within the scope of the value-added tax.

Moreover, Section 109 of the 1997 Tax Code, as amended, provides that the sale of agricultural food products in their original state is not subject to VAT.

Thank you and hoping that we have been of assistance.

Very truly yours,

ROMEO D. LUMAGUI, JR.
Commissioner of Internal Revenue
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