REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Quezon City

Section 109 (1) (T) of the Tax Code of 1997, as amended
Revenue Regulations No. 16-2005
BIR Ruling No. VAT-137-21
VAT- 078-2023

JUL 18 2023

ASIAN SHIPPING CORPORATION
88 C-3 Road, Kaunlaran Village
Caloocan City 1409, Philippines

Attention: **Mr. Edison K. Sy**
Assistant Manger

Gentlemen:

This refers to your request, referred to in this Office by the Department of Finance (DOF), for an exemption from payment of value-added tax (VAT) on the importation of one (1) unit of Tugboat, "ASC HAPPY" from the seller, Xiamen Din-Stone Import & Export Trade Co. Ltd. of China.

Documents submitted show that **Asian Shipping Corporation** (TIN , is a domestic corporation organized under the laws of the Republic of the Philippines; that it is registered with the Securities and Exchange Commission (SEC) under Company Registration No. ; that one of its primary purposes is to purchase, build, or otherwise acquire steam or other ships or vessels, together with equipment and furniture therefore, to employ the same in conveyance and carriage of goods, wares and merchandise of every description in the Philippine coastwise traffic, or upon the high seas; that it is duly accredited by the Maritime Industry Authority (MARINA) and is authorized to engage in domestic shipping business per MARINA Certification No. (2022) dated December 28, 2022 which is valid until January 19, 2026; and that it is currently importing one (1) unit Tugboat named "ASC Happy" from the seller, Xiamen Din-Stone Import & Export Trade Co. Ltd. of China.

Hence, this request.

In reply, please be informed that Section 109 (1) (T) of the National Internal Revenue Code (Tax Code) of 1997, as amended, provides as follows:

> *"SEC. 109. Exempt Transactions. —*
>
> *(1) Subject to the provisions of subsection (2) hereof, the following transactions shall be exempt from the value-added tax.*
>
> *xxx xxx xxx*
>
> *(T) Sale, importation or lease of passenger or cargo vessels and aircraft, including engine, equipment and spare parts thereof for domestic or international transport operations;"*

In relation thereto, Section 4.109-1 (B) (1) (t) of Revenue Regulations (RR) No. 16-2005, as amended, states that:

> *"SECTION 4.109-1. VAT-exempt Transactions. —*
>
> *xxx xxx xxx*

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(B) Exempt Transactions. —

(1) Subject to the provisions of Subsection (2) hereof, the following transactions shall be exempt from VAT:

xxx xxx xxx

(t) Sale, importation or lease of passenger or cargo vessels and aircraft, including engine, equipment and spare parts thereof for domestic or international transport operations; Provided, however, that the exemption from VAT on the importation and local purchase of passenger and/or cargo vessels shall be subject to the requirements on restriction on vessel importation and mandatory vessel retirement program of Maritime Industry Authority (MARINA)".

On the other hand, Section 4.1 of Rule II of the Implementing Rules and Regulation (IRR) of Republic (RA) Act No. 9295[1] provides for the guidelines to implement the Value-added tax (VAT) exemption which can be enjoyed by domestic shipping industry, to wit:

"4.1. Value-Added Tax (VAT) Exemption – All MARINA-registered domestic shipowners/ operators shall be exempt from payment of VAT for the following:

4.1.1. Importation and local purchase of passenger and/or cargo ships 150 GT and above including engine and spare parts of the particular ship(s) imported or locally purchased; provided that the ship to be imported shall comply with the following requirements:

Type	*Maximum Age from original date of launching*
Passenger/cargo	*15 years old*
Tanker	*10 years old*
High Speed Passenger	*5 years old*

4.1.2. Importation of life-saving equipment, fire fighting systems, safety and rescue equipment, communication and navigational safety equipment, steel plates, and other metal plates including marine-grade aluminum plates, used for transport operations.

4.1.3. Sale, Transfer or Disposition of articles covered under 4.1.1 and 4.1.2 hereof.

However, in case of local purchase, if the exemption from the payment of VAT is availed of by the domestic shipowners/ operators, the ship builder shall no longer be entitled to avail of such incentives."

[1] *"AN ACT PROMOTING THE DEVELOPMENT OF PHILIPPINE DOMESTIC SHIPPING, SHIPBUILDING, AND SHIP REPAIR AND SHIP BREAKING, ORDAINING REFORMS IN GOVERNMENT POLICIES TOWARDS SHIPPING IN THE PHILIPPINES, AND FOR OTHER PURPOSES."*

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The MARINA, likewise, issued Memorandum Circular (MC) No. 104 which defined *Passenger vessel as a "vessel which is authorized to carry more than twelve (12) passengers"*, while defining, *Cargo vessel as a "vessel which is not a passenger vessel"*. Also, under the same MC No. 104, *Tugboat is defined as "a mechanically propelled vessel of small tonnage with little or no cargo capacity, used for towing or pushing to assist vessels at sea, in or out harbors, rivers, and docks, and also for coastal or harbor towage of barges, lighters and other small craft."*

In the case of LUZON STEVEDORING CORPORATION vs. COURT OF TAX APPEALS and the HONORABLE COMMISSIONER OF INTERNAL REVENUE (GR No. L-30232 July 29, 1988), the Supreme Court, in upholding the decision of the Court of Tax Appeals (CTA) in CTA Case No. 1484, states that:

> *"...."tugboats" are not "Cargo vessel" because they are neither designed nor used for carrying and/or transporting persons or goods by themselves but are mainly employed for towing and pulling purposes. As such, it cannot be claimed that the tugboats in question are used in carrying and transporting passengers or cargoes as a common carrier by water, either coastwise or oceangoing and, therefore, not within the purview of Section 190 of the Tax Code, as amended by Republic Act No. 3176"*
>
> *xxx xxx xxx*
>
> *...tugboats clearly do not fall under the categories of passenger and/or cargo vessels."*

It is a basic principle of statutory construction that where a provision of law speaks categorically, the need for interpretation is obviated, no plausible pretense being entertained to justify non-compliance. All that has to be done is to apply it in every case that falls within its terms (Allied Brokerage Corp. v. Commissioner of Customs, L-27641, 40 SCRA 555 [1971]; Quijano, etc. v. DBP, L-26419, 35 SCRA 270 [1970]).

Premises considered, this Office rules that since tugboat is neither designed nor used for carrying and/or transporting persons or goods by themselves but are mainly employed for towing and pulling purposes, hence, it is not among the vessels referred to under Section 109 (1) (T) of the Tax Code of 1997, as amended. Ergo, the importation by Asian Shipping Corporation of one (1) unit tugboat named "ASC Happy" shall be subject to VAT pursuant to the provision of the Tax Code of 1997, as amended.

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.

Very truly yours,

ROMEO D. LUMAGUI, JR.
Commissioner of Internal Revenue
011426

CC: **DEPARTMENT OF FINANCE**
Office of Revenue Generation and
Local Finance Group
Roxas Boulevard Corner Pablo
Ocampo, Sr. Street, Manila, 1004

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