April 12, 2019

BIR RULING NO. 251-19

Secs. 106 (A) (2) (a) (6); 108 (B) (4); 109 (1) (E), (S), (T); 118 (a); 135 (a); 148, 1997 Tax Code; RA 10378; RR 16-05; RR 04-07; RMC 046-08; RR 15-13; BIR VAT Ruling No. 021-01; BIR Ruling No. 099-11

SGV & Co.
6760 Ayala Avenue
Makati City

Attention: *AAA*

Gentlemen :

This refers to your letters dated April 19, 2011 and June 30, 2011, filed in behalf of your client All Nippon Airways Co. Ltd. Philippines Branch Office (ANA Phil. Branch), requesting for a ruling that the contracts entered into by ANA Phil. Branch are either exempt from value-added tax (VAT), subject to VAT at zero percent (0%), or are exempt from excise tax.

The facts, as represented, are as follows:

All Nippon Airways Co. Ltd. (ANA Co. Ltd.), a foreign corporation organized and existing under the laws of Japan, is primarily engaged in business as an international air carrier with more than two hundred (200) aircrafts flying around the world. It was established on December 27, 1952 to engage in the business of providing scheduled and non-scheduled air transportation, buying, selling, leasing and maintenance of aircraft & aircraft parts, and aircraft transportation ground support, including passenger boarding procedures and loading of hand baggage.

ANA Phil. Branch is duly-licensed by the Philippine Securities and Exchange Commission (SEC) to engage in the international transportation of passengers and cargo by virtue of its License to Transact Business in the Philippines, Company Reg. No. FS201018696, issued on November 24, 2010. ANA Co. Ltd. was issued a license to transact business in the Philippines by the SEC under the name "All Nippon Airways Co. Ltd. Philippines Branch Office" to engage as an international air carrier. The operations

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will mainly cover flying passengers and cargoes from Manila to Narita, Japan and vice-versa. It may also fly passengers and cargoes from Manila to other foreign destinations.

ANA Phil. Branch was issued Taxpayer Identification No. (TIN) 000-000-000-000 and a Certificate of Registration (COR) by the Bureau of Internal Revenue, Revenue District Office (RDO) No. 50, South Makati on December 10, 2010 for the following registered tax types: Income Tax/Gross Philippine Billings Tax, Expanded Withholding Tax, Percentage Tax and Withholding Tax on Compensation and Fringe Benefits Tax.

Furthermore, the Civil Aeronautics Board (CAB) issued a Certification dated January 20, 2011 that it has approved, *prima facie*, the issuance of a Temporary Operating Permit (TOP) to operate scheduled international air transportation services to ANA Co. Ltd. for the route Manila-Tokyo, v.v.

As shown in the Certification issued by the General Manager of Ninoy Aquino International Airport Terminal 3 (NAIA 3), dated February 28, 2011, the first and inaugural flight of ANA Phil. Branch from Manila to Japan was on February 28, 2011.

It is further represented that the local suppliers of goods have been passing on twelve percent (12%) VAT to ANA Phil. Branch. In addition, certain suppliers of services of ANA Phil. Branch require inward remittance of US dollars from ANA Co. Ltd. as a condition precedent for the sales of services to be considered zero-rated. Finally, as an international air carrier, it is also represented that ANA Phil. Branch regularly purchases fuel and other petroleum products from its suppliers, *i.e.*, Pilipinas Shell Petroleum Corp.

In view of the foregoing, you request confirmation of your opinion that:

1. ANA Phil. Branch is exempt from VAT:

    (a) On the sale of services as an international air carrier pursuant to Section 109 (1) (E) and Section 109 (1) (S) of the 1997 National Internal Revenue Code (Tax Code), as amended by Republic Act No. 10378 (RA 10378), otherwise known as "An Act Recognizing the Principle of Reciprocity as Basis for the Grant of Income Tax Exemptions to International Carriers and Rationalizing Other Taxes Imposed Thereon by Amending Sections 28 (A) (3) (A), 109, 118 and 236 of the National Internal Revenue Code, as Amended, and for Other Purposes";

    (b) On the purchase, importation or lease of passenger or cargo aircraft, including engine, equipment and spare parts thereof for international transport operations pursuant to Section 109 (1) (T) of the Tax Code, as amended by RA 10378;

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(c) On the importation of fuel, goods and supplies used for international air transport operations pursuant to Section 109 (1) (U) of the Tax Code, as amended by RA 10378;

2. ANA Phil. Branch's local purchases are subject to zero percent (0%) VAT, specifically:

   (a) On the local purchases of goods, supplies, equipment and fuel used for international air transport operations pursuant to Section 106 (A) (2) (6) of the Tax Code, as amended; and

   (b) On the local purchases of services, including leases of property used for international air transport operations pursuant to Section 108 (B) (4) of the Tax Code, as amended;

3. ANA Phil. Branch's local purchases of goods, supplies, equipment, fuel, and services, including leases of property used for international air transport operations paid for in Philippine Peso are subject to automatic zero percent (0%) VAT and does not require payment to be inwardly remitted by All Nippon Airways Co. Ltd. (Japan) nor be made in acceptable foreign currency pursuant to Sections 106 (A) (2) (6) and 108 (B) (4) of the Tax Code, as amended; and

4. ANA Phil. Branch's purchase of fuel and other petroleum products is exempt from excise tax pursuant to Section 135 (a) of the Tax Code, as amended.

We reply, as follows:

1.) VAT Exempt Transactions:

a) Sale of services as an international air carrier

Please be informed that Sections 109 (1) (E), 109 (1) (S) and 118 of the Tax Code, as amended by Republic Act (RA) No. 10378 and RA No. 10963, provides as follows:

"Section 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

(E) Services subject to percentage tax under Title V;

xxx xxx xxx

(S) Transport of passengers by international carrier;

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"Section 118. Percentage Tax on International Carriers. —

xxx xxx xxx

(A) International air carriers doing business in the Philippines on their gross receipts derived from transport of cargo from the Philippines to another country shall pay a tax of three percent (3%) of their quarterly gross receipts."

In addition, Sections 5 and 6 of Revenue Regulations (RR) No. 15-2013, which implements the provisions of RA No. 10378, provides:

"SECTION 5. COMMON CARRIER'S TAX. — International air carriers and international shipping carriers doing business in the Philippines on their gross receipts derived from the transport of cargo from the Philippines to another country shall pay a Common Carrier's Tax (Percentage Tax on International Carriers) equivalent to three percent (3%) of their quarterly gross receipts pursuant to Section 118 of the NIRC, as amended by RA No. 10378.

For purposes of determining the Common Carrier's Tax liability of international carriers pursuant to Section 118 of the NIRC, as amended, "gross receipts" shall include, but shall not be limited to, the total amount of money or its equivalent representing the contract, freight/cargo fees, mail fees, deposits applied as payments, advance payments and other service charges and fees actually or constructively received during the taxable quarter from cargo and/or mail, originating from the Philippines in a continuous and uninterrupted flight, irrespective of the place of sale or issue and the place of payment of the passage documents.

In cases when the Gross Philippines Billings Tax provided for in Section 28 (A) (3) of the NIRC, as amended, is not applicable, the Common Carrier's Tax herein imposed under Section 118 of the NIRC, as amended, shall still apply. Provided that, an off-line international carrier having a branch/office or a sales agent in the Philippines which sells passage documents for compensation or commission to cover off-line flights or voyages of its principal or head office, or for other airlines/sea carriers covering flights or voyages originating from Philippine ports or off-line flights or voyages, is not considered engaged in business as an international carrier in the Philippines and is, therefore, not subject to the three percent (3%) Common Carrier's Tax under Section 118 (A) of the NIRC, as amended. This provision is without prejudice to classifying such taxpayer under a different category pursuant to a separate provision of the NIRC."

xxx xxx xxx

"SECTION 6. VALUE-ADDED TAX. — The transport of passengers by international carriers doing business in the Philippines shall be exempt from value-added tax (VAT) pursuant to Section 109(1)(S) of the NIRC, as amended by RA No. 10378. The transport of cargo by international carriers doing business in the

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Philippines shall be exempt from VAT pursuant to Section 109(1)(E) of the NIRC, as amended by RA No. 10378, as the same is subject to Common Carrier's Tax (Percentage Tax on International Carriers) under Section 118 of the NIRC, as amended. International carriers exempt under Sections 109(1)(S) and 109(1)(E) of the NIRC, as amended shall not be allowed to register for VAT purposes."

Applying the foregoing provisions, ANA Phil. Branch is subject to percentage tax at the rate of three percent (3%) of its gross receipts on its transport of cargoes from the Philippines to another country. On the other hand, it is exempt from VAT on its transport of passengers from the Philippines to another country.

b.) Purchase, importation or lease of passenger or cargo aircraft, including engine, equipment and spare parts thereof for international transport operations

Section 109 (1) (T) of the Tax Code, as amended by RA 10378 and RA 10963, provides, *viz.*:

"Section 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;

xxx xxx xxx

In relation thereto, Section III of Revenue Memorandum Circular (RMC) No. 46-2008 clarifies that:

*"**A-9**: The sale, importation or lease of passenger or cargo aircraft, including engine, equipment and spare parts thereof for domestic or international transport operations is VAT-exempt pursuant to Section 109(2) (now Section 109 (1)(T)) of the Code, as amended by RA 9337."*

Accordingly, ANA Phil. Branch will not be liable for VAT if it sells, imports or leases aircraft, engine, equipment and spare parts for domestic or international air transport operations since such transactions are exempt from VAT.

c.) Importation of fuel, goods and supplies used for international air transport operations

With respect to its importation of fuel, goods and supplies, Section 109 (1) (U) of the Tax Code, as amended, by RA No. 10378 and RA No. 10963 provides, *viz.*:

"Section 109. Exempt Transactions. — (1) Subject to the provisions of subsection (2) hereof, the following shall be exempt from the value-added tax:

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(U) Importation of fuel, goods and supplies by persons engaged in international shipping or air transport operations: Provided, That the fuel, goods and supplies shall be used for international shipping or air transport operations;

xxx xxx xxx

Section III of RMC No. 46-2008 clarifies that the exemption from VAT, as provided above, is not without condition that must be strictly complied with. It provides that:

*"**A-10**: The importation of fuel, goods and supplies for use in the international air transport operations is VAT exempt. Provided, that the said fuel, goods and supplies shall be used exclusively or shall pertain to the transport of goods and/or passenger from a port in the Philippines directly to a foreign port without stopping at any other port in the Philippines to unload passengers and/or cargoes loaded in and from another domestic port; Provided, further, that if any portion of such fuel, goods or supplies is used for purposes other than that mentioned in this paragraph, such portion of fuel, goods and supplies shall be subject to 12% VAT.*

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***A-12**: Direct importations of fuel by an air transportation company exclusively engaged in international operations are considered VAT exempt. However, the importer has to secure a VAT-exempt Authority to Release Imported Goods (ATRIG) from the appropriate BIR office prior to the release of the imported fuel from the custody of the Bureau of Customs (BOC)"*

Since ANA Phil. Branch is an international air carrier engaged exclusively in international air transport operations, its importation of fuel, goods and supplies in connection to its international air transport operations is exempt from VAT provided, that the said fuel, goods and supplies shall be used exclusively or shall pertain to the transport of goods and/or passenger from a port in the Philippines directly to a foreign port without stopping at any other port in the Philippines to unload passengers and/or cargoes loaded in and from another domestic port.

2. Transactions subject to VAT at zero percent (0%)

a) Local purchases of goods, supplies, equipment and fuel used for international air transport operations

Section 106 (A) (2) (a) (6) of the Tax Code, as amended, provides follows, *viz.*:

"(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

(a) Export Sales. — The term 'export sales' means:

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(6) The sale of goods, supplies, equipment and fuel to persons engaged in international shipping or international air transport operations"

RMC No. 46-2008 further provides that:

*"A-11: The **sale of goods, supplies, equipment, fuel and services** (including leases of property) to the common carrier to be used in its international air transport operations is **zero-rated**. Provided, that the same is limited to goods, supplies, equipment, fuel and services pertaining to or attributable to the transport of goods and passengers from a port in the Philippines directly to a foreign port without docking or stopping at any other port in the Philippines to unload passengers and/or cargoes loaded in and from another domestic port; Provided, further that if any portion of such fuel, equipment, goods or supplies and services is used for purposes other than that mentioned in this paragraph, such portion of fuel, equipment, goods, supplies and services shall be subject to 12% VAT."* (Emphasis supplied).

Applying the foregoing provisions of the Tax Code, as amended, and RMC 46-2008, the sale of goods, supplies, equipment and fuel by VAT-registered local suppliers to ANA Phil. Branch, which exclusively engages in the international transport of goods and passengers, is subject to VAT at the rate of zero percent (0%) provided that such purchases pertains to or attributable to the transport of goods, and passengers from a port in the Philippines directly to a foreign port without docking or stopping at any other port in the Philippines to unload passengers and/or cargoes loaded in and from another domestic port.

b.) Local purchases of services, including leases of property, used for international air transport operations

As to local purchases of services, including leases of property, Section 108 (B) (4) of the Tax Code, as amended, provides that:

"(B) Transactions Subject to Zero Percent (0%) Rate. — The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:

xxx xxx xxx

*(4) Services rendered to **persons engaged** in international shipping or international air transport operations, including leases of property for use thereof;"* (Emphasis supplied).

RMC No. 46-2008 further provides that:

"Q-11: Are sales of goods, supplies, equipment, fuel and services to persons engaged in international air transport operation subject to VAT?

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*A-11: The **sale of goods, supplies, equipment, fuel and services** (including leases of property) to the common carrier to be used in its international air transport operations is **zero-rated**. Provided, that the same is limited to goods, supplies, equipment, fuel and services pertaining to or attributable to the transport of goods and passengers from a port in the Philippines directly to a foreign port without docking or stopping at any other port in the Philippines to unload passengers and/or cargoes loaded in and from another domestic port; Provided, further that if any portion of such fuel, equipment, goods or supplies and services is used for purposes other than that mentioned in this paragraph, such portion of fuel, equipment, goods, supplies and services shall be subject to 12% VAT."* (Emphasis supplied).

XXX XXX XXX

"Q-14: Which transactions with international air transport operators are zero-rated?

*A-14: **Sale of services to persons engaged exclusively in international air transport operations, including leases of property for use thereof, and the sale of goods, supplies, equipment and fuel are zero-rated**. However, sale of goods, supplies, equipment and fuel as well as services rendered to persons engaged in both domestic and international operations shall be zero-rated only with respect to the portion that will be used in their international operations."* (Emphasis supplied).

Based on the foregoing, in order to qualify for zero-rating, the services rendered by a VAT-registered person to a person engaged in international air transport operations must pertain to or must be attributable to the transport of goods and passengers from a port in the Philippines directly to a foreign port without docking or stopping at any port in the Philippines.

As held by this Office in BIR Ruling No. 099-11 dated April 6, 2011, *viz.*:

"It is worthy to mention that in the case of international vessels, for which the same rule on zero-rating is applied, this Office held that **the VAT zero-rated services contemplated in the VAT law only refer to services rendered to the international vessel itself**. Examples of such services are crewing, repair, catering, and other similar arrangements. (VAT Ruling No. 021-01 dated May 15, 2001). Inasmuch as this rule applies as well to international air carriers, it is our opinion, therefore, that **for purposes of zero-rating the sale of service to international air carriers, such service must be rendered to the aircraft itself**. (Emphasis supplied)

In the instant case, the services provided by the Hotel to its clients engaged in international air transport operations pertain to room accommodations and food and beverage services. As they are rendered within the Hotel's premises, they have no direct connection with the transport of goods or passengers, and as such, they cannot be considered as services, directly attributable to the transport of goods and passengers from a Philippine port directly to a foreign port entitled to zero-rating. Such being the case, the sale of the foregoing services by the Hotel is not zero-rated,

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but is appropriately subject to the 12% VAT."

Thus, applying the foregoing provisions of the Tax Code, as amended, and RMC No. 46-2008, local sales of services, including lease of property, to international air carriers are subject to VAT at the rate of zero percent (0%) only if such services are rendered to the aircraft itself.

3.) VAT Zero-Rating

The local purchases of goods, supplies, equipment, fuel, and services, including leases of property, which pertain to or is attributable to the transport of goods and passengers from a port in the Philippines directly to a foreign port without docking or stopping at any other port in the Philippines to unload passengers and/or cargoes loaded in and from another domestic port, by ANA Phil. Branch, as a person engaged exclusively in international air transport operations, is subject to VAT at the rate of zero percent (0%). As such, these purchases are accorded automatic zero-rating without the need to secure prior approval for zero-rating.

In addition, inward remittance in foreign currency as payments to local suppliers is a condition only applicable to paragraphs (1) and (2) of Section 108 (B) of the Tax Code, as amended, and not to paragraph (4), which is applicable to ANA Phil. Branch.

Therefore, the following contracts of ANA Phil. Branch may be subject to VAT at the rate of zero percent (0%), provided the conditions stated above are satisfied:

(1) Agreement with Transnational Air Service Corporation to be the General Sales Agent for Passengers dated 01 January 2011;

(2) Agreement with Airglobe, Inc. to be the General Sales Agent for Cargo dated 01 September 2010;

(3) Agreement with MacroAsia Catering Services, Inc. for Standard Inflight Catering dated 27 February 2011;

(4) Agreement with Lufthansa Technik Philippines, Inc. for Standard Ground Handling dated 27 February 2011;

(5) Agreement with MacroAsia Aircraft Services Corporation for Standard Ground handling dated 27 February 2011;

(6) Agreement with Philippine Airport Ground Support Solutions, Inc. (PAGSS) for Standard Ground Handling dated 26 February 2011;

(7) Agreement with Shimizu Philippine Contractors, Inc. for the Construction of Offices at Ninoy Aquino International Airport (NAIA) Terminal 3 (Passengers and Baggage) and at PAIR-PAGS Center (CARGO) dated March 2011;

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(8) Agreement with Manila International Airport Authority (MIAA) for the lease of the NAIA Terminal 3 Office of ANA Phil. Branch dated February 23, 2011;

(9) Billing Statement from MIAA for the consumption of electricity, water and other utilities of ANA Phil. Branch in its NAIA Terminal 3 Office; and

(10) Agreement with Showa Shell Sekiyu K.K. for the Supply of Aviation Fuel dated 27 February 2011.

4.) Excise Tax

Please be informed that Section 135 (a) of the Tax Code, as amended, provides as follows, *viz.*:

> *"SECTION 135. Petroleum Products Sold to International Carriers and Exempt Entities or Agencies — Petroleum products sold to the following are exempt from excise tax*:
>
> *(a) International carriers of Philippine or foreign registry on their use or consumption outside the Philippines; Provided, That the petroleum products sold to these international carriers shall be stored in a bonded storage tank and may be disposed of only in accordance with the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner.*
>
> *(b) Exempt entities or agencies covered by tax treaties, conventions and other international agreements for their use of consumption: Provided, however, that the country of said foreign international carrier or exempt entities or agencies exempts from similar taxes petroleum products sold to Philippine carriers, entities or agencies; and*
>
> *(c) Entities which are by law exempt from direct and indirect taxes;"*

It has been ruled that to be entitled to exemption under Section 135 (a) quoted above from the payment of excise tax imposed under Section 148 of the Tax Code, as amended, (1) the petroleum products must be sold to an international carrier for its use and consumption outside the Philippines; and (2) that the country of said carrier exempts from payment of excise tax petroleum products sold to Philippine carriers. *(RMC No. 59-05 dated October 21, 2005)*

Applying the foregoing provisions of the Tax Code, as amended, the sale of petroleum products to ANA Phil. Branch shall be exempt from the payment of excise tax imposed under Section 148 of the Tax Code provided that: (1) the petroleum products sold to ANA Phil. Branch must be stored in a bonded storage tank; (2) it must be used and consumed outside the Philippines; and (3) that the country of ANA Phil. Branch

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exempts from payment of excise tax petroleum products sold to Philippine carriers.

This ruling is issued on the basis of the foregoing facts as represented. However, if upon investigation it will be ascertained that the facts are different, then this ruling shall be considered null and void.

Very truly yours,

(SGD.) CAESAR R. DULAY
Commissioner of Internal Revenue

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