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
BIR Ruling No. 204-2021
VAT-372-2021
OCT 06 2021

PILIPINAS ASIAN PEARL AIRWAYS, INC.
Suite 2802 Discovery Center, 25 ADB Avenue
Ortigas Center, Pasig City

Attention: Atty. Maria Farah Z.G. Nicolas-Suchianco
Treasurer and Corporate Secretary

Gentlemen:

This refers to your request for confirmation of the exemption of **PILIPINAS ASIAN PEARL AIRWAYS, INC.** (Pilipinas Air) from Value-Added Tax (VAT) and custom duties and fees on the importation of aircraft, engines, equipment machinery, spare parts, accessories, commissary and catering supplies or materials.

It is represented that Pilipinas Air is a domestic corporation duly registered with the Securities and Exchange Commission (SEC) under SEC Registration No. with the primary purpose of engaging in the business of air transportation and other related activities in all their aspects, including the operation of any aircraft of any kind and description, including airplanes and helicopters, owned or leased or acquired in any manner, as a common carrier for the carriage of passengers, cargo, freight and mail of all kinds and nature whatsoever; for itself or for others, scheduled or non-scheduled, within and outside the Philippines; and to build, operate and maintain facilities for its operations.

Pilipinas Air is a grantee of a congressional franchise to establish, operate and maintain domestic and international air transport services under Republic Act No. 10901 (Franchise), which lapsed into law on 21 July 2016. In pursuance thereof, Pilipinas Air entered into a Deed of Absolute Sale and Aircraft Lease Agreements with several parties for the acquisition or lease of aircraft described as follows (Aircraft):

1. Acquisition from Challenger Aero Air Corporation, a corporation duly organized and existing under the laws of the Republic of the Philippines

Aircraft Model and Series	:	Bombardier Inc. BD-100-1A10
Manufacturer	:	Bombardier Inc.
Serial Number	:	20215
Registration Mark	:	RP-C8215

2. Lease from Challenger Aero Corporation, a corporation duly organized and existing under the laws of the Republic of the Philippines

Aircraft Model and Series	:	Eurocopter EC130B4

Manufacturer	:	Airbus Helicopters SAS
Serial Number	:	7395
Registration Mark	:	RP-C7395

3. Lease from Challenger Aero Cayman, a corporation duly organized and existing under the laws of the Cayman Islands

Aircraft Model and Series	:	Gulfstream Aerospace Corporation GV
Manufacturer	:	Gulfstream Aerospace Corporation
Serial Number	:	577
Registration Mark	:	VP-CAR, registered with the Civil Aviation Authority of the Cayman Islands

4. Lease from Gulf Aero Asean Ltd., a corporation duly organized and existing under the laws of the Cayman Islands

Aircraft Model and Series	:	Gulfstream Aerospace Corporation G350
Manufacturer	:	Gulfstream Aerospace Corporation
Serial Number	:	4040
Registration Mark	:	VP-CAP, registered with the Civil Aviation Authority of the Cayman Islands

The Bombardier and the Eurocopter Aircraft were imported through and currently located within the Subic Bay Special Economic Zone (SSEZ), and within the jurisdiction of the Subic Bay Metropolitan Authority (SBMA). The Gulfstream GV and Gulfstream G350 Aircraft are currently located in the Philippines but are registered with the Civil Aviation Authority of the Cayman Islands. In order to use the Aircraft for its operations, Pilipinas Air will be importing them into the taxable territory of the Philippines.

In reply, please be informed that the importation or lease of an aircraft intended for domestic or international transport operations is exempt from VAT pursuant to Sec.109 (1)(T) of the National Internal Revenue Code, as amended (NIRC), which provides:

> "Sec. 109. *Exempt Transactions* – (1) Subject to the provisions of Subsection (2) hereof, the following transactions shall be exempt from 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, Sec. 4.109-1(B)(1)(t) of Revenue Regulations (RR) No. 16-2005, as amended, provides:

> "SEC. 4.109-1. VAT-Exempt transactions. –
>
> xxx xxx xxx
>
> (B) Exempt transactions. –

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(1) Subject to the provisions of Section 4.109.2 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);

xxx xxx xxx"

The foregoing was likewise clarified by the BIR in Revenue Memorandum Circular (RMC) No. 46-2008, to wit:

"Q-9: Are the sale, importation or lease of passenger or cargo aircraft, including engine, equipment and spare parts thereof for domestic or international transport operations exempt from VAT?

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)[1] of the Code, as amended by R.A. 9337."

Moreover, Sec. 14 of Pilipinas Air's Franchise provides:

> *"SECTION 14. Equality Clause. —* ***Any advantage, favor, privilege, exemption, or immunity granted under other existing franchises, or which may hereafter be granted, upon prior review and approval of Congress, shall become part of this franchise and shall be accorded immediately and unconditionally to the herein grantee****: Provided, That the foregoing shall neither apply to nor affect provisions of air transport services franchises concerning territory covered by the franchise, the life span of the franchise or the type of service authorized by the franchise." (Emphasis supplied)*

Pursuant thereto, the fiscal incentives granted to Philippine Airlines (PAL) under Section 13 of Presidential Decree (PD) No. 1590 can also be availed of by Pilipinas Air.

PAL's franchise provides that subject to payment of the basic corporate income tax on its income and VAT on its purchases in accordance with the provisions of the NIRC[2], as amended, the tax paid by the grantee "shall be in lieu of all other taxes, duties, royalties, registration, license, and other fees and charges of any kind, nature, or description, imposed, levied, established, assessed, or collected by any municipal, city, provincial, or national authority or government agency, now or in the future, including but not limited to the following:

[1] Now, Section 109(1)(T) of the 1997 Tax Code, as amended.
[2] PD No. 1590, as amended by Section 22 of Republic Act No. 9337.

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2. All taxes, including compensating taxes, duties, charges, royalties, or fees due on all importations by the grantee of aircraft, engines, equipment, machinery, spare parts, accessories, commissary and catering supplies, aviation gas, fuel, and oil, whether refined or in crude form and other articles, supplies, or materials; provided, that such articles or supplies or materials are imported for the use of the grantee in its transport and non-transport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price[3];

xxx xxx xxx" *(Emphasis supplied)*

In view of the foregoing, Pilipinas Air's importation of the purchased or leased Aircraft including engine, equipment and spare parts thereof, as well as accessories, commissary and catering supplies or materials, to be used exclusively for its domestic and international transport operations shall be exempt from VAT, subject to the requirements as may be provided under the existing rules and regulations of the Civil Aeronautics Board (CAB) and the Civil Aviation Authority of the Philippines (CAAP).

Anent the request for exemption from customs duties, the same must be addressed to the Bureau of Customs as the same is not within the jurisdiction of this Office

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,

CAESAR R. DULAY
Commissioner of Internal Revenue

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[3] Section 13 of PD No. 1590