JAPANESE CONTRACTORS UNDERTAKING OVERSEAS ECONOMIC COOPERATION FUND OF JAPAN (OECF) FUNDED PROJECT ARE EXEMPT FROM THE EIGHT AND ONE HALF PERCENT (8.5%) CREDITABLE VAT IMPOSED U...

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For the information and guidance of all concerned, quoted hereunder is BIR Ruling No. DA 135-99 dated March 8, 1999 where this Office held that —

> "In reply thereto, please be informed that pursuant to No. V paragraph 4(1) and (2) of the Exchange of Notes dated March 26, 1991 between the Governments of Japan and the Republic of the Philippines reading:
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> "4.(1) The Government of the Republic of the Philippines will exempt the Fund from all fiscal levies or taxes imposed in the Republic of the Philippines on and/or in connection with the Project Loan, the Fisheries Sector Program Loan, the Transport Sector Program Loan and the Environmental Sector Adjustment Program Loan as well as, interest accruing therefrom.
>
> "(2) The Government of the Republic of the Philippines will, itself or through its executing agencies or instrumentalities, assume all fiscal levies or taxes imposed in the Republic of the Philippines on Japanese firms and nationals operating as suppliers, contractors or consultants on and/or in connection with any income that may accrue from the supply of products and/or services to be provided under the Project Loan".
>
> the Joint Venture formed by Taisei Corporation and Kurimoto Ltd. both Japanese resident foreign corporations for the purpose of undertaking the aforementioned construction project being a Japanese national in exempt from VAT imposed under Sections 106 (A) and 108 (A) both of the Tax Code of 1997 on its supply of materials and services relative to the aforementioned Project. This is so, because the Exchange of Notes between the Japanese and Philippine Government partakes the nature of an international agreement even without legislative concurrence hence, exempt from VAT under Section 109(q) of the same Code. [Kumagai-Gumi Co., Ltd. (Phil. Branch) vs. The Commissioner of Internal Revenue, CTA Case No. 4670, Prom. July 29, 1997]
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> Furthermore, your claim for refund of the 8.5% payment by the Joint Venture of the creditable VAT should be filed with the Revenue District Officer concerned which has jurisdiction over the matter within two (2) years after the closer of the taxable quarter when the sales were made. (Sec. 4.106-1 Revenue Regulations No. 7-95)
>
> Finally, your claim for refund of the 1% expanded withholding tax should be filed with the Appellate Division, BIR, National Office Building, Diliman, Quezon City, within two (2) years after the payment of the tax pursuant to Section 204(C) of the Tax Code of 1997".

The aforementioned tax exemption and tax assumption clauses in the Exchange of Notes executed by the Philippine and Japanese government are standard clauses in Exchange of Notes concerning OECF-funded projects.

Thus, Japanese contractors undertaking OECF-funded projects in the Philippines are not liable to Philippine taxes.

They are exempt from VAT imposed under Sections 106(A) and 108(A) both of the Tax Code of 1997 on their supply of materials and services relative to the OECF-funded project. Consequently, they are exempt from the eight and one half percent (8.5%) creditable value added tax imposed under Section 114(C) of the Tax Code of 1997. They are also exempt from the one percent (1%) expanded withholding tax imposed under Section 2.57.2(E) of Revenue Regulations No. 2-98 implementing Section 57(B) of the Tax Code of 1997.

All revenue officials and employees are enjoined to give this Circular as wide a publicity as possible.

(SGD.) BEETHOVEN L. RUALO
Commissioner of Internal Revenue

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