MAP Management Association of the Philippines
MAP Tax Bulletin
map.org.ph

Issue No. 103 July 2023

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Alkylate importations are not subject to excise taxes

Petron Corporation vs. Commissioner of Internal Revenue, G.R. No. 255961 (20 March 2023)

Section 148(e) of the Tax Code imposes excise taxes on naphtha, regular gasoline, and other similar products of distillation. Based on a Bureau of Internal Revenue letter stating that alkylate is a product of distillation similar to naphtha, the Bureau of Customs collected excise taxes on the alkylate importations of a petroleum company.

According to the Court of Tax Appeals (CTA), although alkylate is not directly produced through distillation but by alkylation, its raw materials, light olefins, and isobutane are nonetheless products of distillation. However, since alkylate cannot exist without its raw materials, alkylate initially undergoes the process distillation. As such, the CTA held that alkylate is similar to naphtha, thus, subject to excise tax. In this light, the CTA denied the claim for refund.

However, the Supreme Court (SC) reversed the CTA decision. Initially, the SC noted that the claim for refund was not based on the excise tax exemption of alkylate but rather on the Section 148(e) of the Tax Code which does not include alkylate among the excisable articles therein. Hence, the SC applied the doctrine of strict construction of tax laws in favor of the taxpayer.

The SC granted the refund of excise taxes on alkylate importations based on the following:

- Section 148(e) of the Tax Code does not expressly include alkylate or products whose raw materials are products of distillation. It only mentions naphtha, regular gasoline, and other similar products of distillation.

- It is undisputed that alkylate is not produced by distillation but by alkylation. This was even confirmed by the Chief of the BIR Laboratory Section and by the CTA *En Banc*.

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- Alkylate does not fall under “other similar products of distillation.” It is incorrect to declare that alkylate is a product of distillation simply because its raw materials are produced through distillation.

- Distillation, which is a physical separation process, does not directly cause the production of alkylate.

- Alkylate is a mere component which can be blended into finished gasoline to help meet the specification requirements, particularly, those related to octane quality and volatility. It has no use as a product by itself as it does not have the necessary volatility to run an engine.

- More weight was given to the testimonies of experts in the field of fuel and petroleum whose experience cannot be ignored.

When 30-day period to appeal to the CTA is not counted from receipt of FDDA
Commissioner of Internal Revenue vs. Manila Medical Services, Inc., G.R. No. 255473 (13 February 2023)

After filing its protest against the Final Assessment Notice, a taxpayer received a Warrant of Distraint or Levy (WDL) on 12 September 2014. On 10 October 2014 or within 30 days from receipt of the WDL, the taxpayer filed a Petition for Review with the Court of Tax Appeals (CTA).

According to the BIR, the Petition for Review is considered filed out of time since the 30-day period should be counted from the alleged receipt by the taxpayer of the Final Decision on Disputed Assessment (FDDA) on 09 July 2013.

The Supreme Court ruled that the adverse decision appealable to the CTA is the WDL and not the FDDA. This is because the BIR failed to prove that the taxpayer received the FDDA and even assuming that said FDDA was received, the same was void for not stating the facts, the law, rules and regulations, or jurisprudence on which it was based.

When RE developer not required to be DOE-registered for input VAT refund purposes
CBK Power Company Limited vs. Commissioner of Internal Revenue, G.R. No. 247918 (01 February 2023)

A renewable energy (RE) developer engaged in the sale of electricity generated through hydropower subject to the VAT zero rate under Section 108(B)(7) of the Tax Code filed a claim for refund of excess and unutilized input VAT attributable to said zero-rated sale. The legal basis for the claim was Section 112(A) in relation to Section 108(B)(7) of the Tax Code.

According to the Supreme Court, an RE Developer anchoring its refund claim on Sections 112(A) and 108(B)(7) of the Tax Code does not need to comply with the requirements for availment of fiscal incentives under Republic Act No. 9513. Hence, it is not required to be registered with the Department of Energy (DOE), to secure DOE certification and to comply

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with other requirements in the DOE implementing rules and regulations and Revenue Regulations No. 7-2022.

When satellite communications service fees subject to final withholding tax
Aces Philippines Cellular Satellite Corporation vs. Commissioner of Internal Revenue, G.R. No. 226680 (30 August 2022)

A local telecommunications company (“telco”) entered into an Air Time Purchase Agreement with a foreign company that allowed the latter to sell satellite communications time to the local telco which, in turn, shall become the exclusive provider/distributor to Philippine subscribers. In consideration, the local telco paid satellite airtime fees which were not subjected to final withholding taxes (FWT).

During a tax investigation, the BIR assessed the local telco for deficiency FWT on the satellite airtime fees. A Final Decision on Dispute Assessment was later issued upholding the deficiency FWT assessment.

The Court of Tax Appeals (CTA) affirmed the FWT assessment after the CTA concluded that the satellite airtime fees are Philippine-sourced income. The CTA had the following findings:

- The services do not only compound with the use of the satellite located in outer space and the Network Control Center (NCC) located in a foreign country. There is a continuous and very real connection starting from the Philippines, the satellite, the NCC and the Philippines again through the local telco’s gateway facilities.

- The local telco pays satellite airtime fees only when the satellite airtime is successfully delivered to the local telco through its gateway facilities in the Philippines.

- The transmission of satellite signals does not occur entirely outside the Philippines because there would be no satellite transmission if the signal does not reach the gateway facilities located in the Philippines.

Upon appeal to the Supreme Court (SC), the local telco argued that the satellite airtime fees were sourced outside the Philippines because the relevant services (act of transmission) took place in outer space and the foreign company does not own equipment in the Philippines.

However, the SC agreed with the CTA and the BIR that the satellite airtime fees are income from Philippine sources. Applying a two-tiered approach, the SC first identified the source of the income and then the situs of that source.

The SC held that the gateways’ receipt of the call, as routed by the satellite, is the income-generating activity or the income source. This is because the receipt of the call coincides with the completion or delivery of the services, and with the inflow of economic benefits (i.e., accrual of satellite airtime fees) in favor of the local telco.

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With respect to situs, the SC held that the situs of the income-generating activity is within the Philippines. It found that the income generating-activity (i.e., receipt of the call) is directly associated with the gateways located within Philippine territory, and that the business of providing satellite communication services in the Philippines is a government-regulated industry.

Declaring RR No. 1-2014, RMC No. 5-2014 and SEC MC No. 1-2014 as unconstitutional
The Philippine Stock Exchange, Inc., et al vs. Secretary of Finance, et al, G.R. No. 213860 (05 July 2022)

In 2014, the Department of Finance (DOF) issued Revenue Regulations (RR) No. 1-2014 requiring all withholding agents to submit a digital copy of the alphabetical lists (alphalists) of their employees and payees. In this regard, it prohibited the submission of alphalists where the income payments and taxes withheld are lumped into one single amount and name such as “Various employees”, “Various payees”, “PCD nominees” and “Others”.

Subsequently, the Bureau of Internal Revenue (BIR) issued Revenue Memorandum Circular (RMC) No. 5-2014 further requiring the disclosure of the taxpayer identification number and complete names of the payees with corresponding amount of income and withholding tax.

Following suit, the Securities and Exchange Commission (SEC) issued Memorandum Circular No. 10-2014 directing the Philippine Depository and Trust Corporation (PDTC) and broker dealers to provide the listed companies or their transfer agents an alphalist of all depository account holders and the total shareholding in each of the accounts and sub-accounts.

In response, the Philippine Stock Exchange, Inc., Bankers Association of the Philippines, Philippine Association of Securities Brokers and Dealers, Inc. and other concerned entities claiming to be adversely affected by the above BIR and SEC issuances, sought to invalidate the same on the ground of violation of due process.

The Supreme Court that RR No. 1-2014, RMC No. 5-2014 and MC No. 10-2014 are void for being unconstitutional. It reasoned as follows:

- The objective of RR No. 1-2014 which is the monitoring and capturing of information on all income payments by employers and payors in order to establish a simulation module, to formulate analytical framework and institutionalize enforcement activities is vague and highly subjective.

- The right to due process was violated by the Secretary of Finance and the Commissioner of Internal Revenue. Since the questioned regulations, particularly SEC MC No. 10-2014, are legislative in nature that change the burden of the entities covered, notice and hearing are required for their validity. However, these were not complied with.

- The questioned regulations violate the right to privacy. The Government has the burden to show and prove (1) that its action serves a compelling state interest and (2) that it is

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narrowly drawn down to prevent abuses. The Supreme Court found that the second requirement was not met since there was no evidence presented to prove that the regulations were narrowly drawn as the least restrictive means for effecting the invoked interest.

- The SEC Chairperson had no authority to issue SEC MC No. 10-2014. The SEC cannot use its rule-making power to order compliance with a tax regulation that is outside the scope of its authority. It cannot enforce tax laws and regulations.

- The DOF and the BIR acted beyond their authority in issuing RR No. 1-2014 and RMC No. 10-2014, respectively. This is because the use of PCD Nominees or securities intermediaries are matters outside taxation. Aside from the taxation aspect, the Tax Code does not govern matters involving securities.

Amending the rules on the filing of Out-of-District Returns
Revenue Regulations No. 6-2013 (published 13 June 2013)

Generally, Authorized Agent Banks (AABs), Revenue Collection Officers (RCOs), Revenue District Offices (RDOs), Large Taxpayer District Offices (LTDOs) and Large Taxpayer Divisions shall not accept Out-of-District Returns. In this regard, the following amended guidelines should be observed:

- Where an AAB inadvertently accepts an Out-of-District Return and the corresponding tax payment, the RDO/LTDO/LT Division receiving such return and payment shall segregate and transmit the same to the proper RDO/LTDO/LT Division which shall impose a 25% surcharge for wrong venue filing of the return.

- The filing of Out-of-District Returns and payment of corresponding tax is allowed when there is a revenue issuance or bank bulletin announcing that taxpayers are allowed to file returns and pay the corresponding taxes due anywhere, regardless of RDO/LTDO/LT Division jurisdiction.

Guidelines and revised requirements in the processing of VAT refund claims
Revenue Memorandum Circular No. 71-2023 (issued 23 June 2023)

The Bureau of Internal Revenue (BIR) issued uniform guidelines in the processing of VAT refund claims and prescribed the revised mandatory documentary requirements. Here are some of the guidelines:

- The time frame to process and grant refund claims for VAT refund, and to release the payment thereof is 90 days from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Section 112(A) and (B) of the Tax Code.

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- Applications for VAT Credit/Refund Claims (BIR Form No. 1914) shall be received by the following:

<table>
<tr><td>VAT Credit Audit Division, National Office</td><td>Direct exporter filing a claim pursuant to the following Tax Code provisions in relation to Section 112(A):

• Section 106(A)(2)(a)(1)
• Section 106(A)(2)(a)(6)
• Section 108(B)(2)
• Section 108(B)(4)
• Section 108(6)</td></tr>
<tr><td></td><td></td></tr>
<tr><td>• VAT Audit Section (VATAS), Assessment Division, Revenue Region
• Revenue District Office if there is no VATAS
• Large Taxpayers VAT Audit Unit, Large Taxpayers Service</td><td>Claimants:
• engaged in VAT zero-rated activities other than direct exports above
• whose VAT registration has been cancelled
• for recovery of erroneously or illegally assessed or collected VAT</td></tr>
</table>

- The prescriptive period for input VAT refund claims of a taxpayer whose VAT registration has been cancelled due to business closure or retirement or to change to non-VAT shall be two years from the date of issuance of the tax clearance.

- Only applications with complete documentary requirements as enumerated in the Checklist of Requirements shall be received and processed by the BIR.

- If the taxpayer-claimant has outstanding tax liabilities (final and executory) upon filing or during processing of the refund claim, the approved VAT refund shall be referred for garnishment.

- The original copies of the invoices/receipts for sales and purchases shall be submitted for verification. If the claim is approved, these original documents shall be forwarded to the Commission on Audit. Otherwise, these shall be returned to the taxpayer-claimant.

- Claims for refund of unutilized input VAT on importations shall be supported by a VAT Payment Certification from the Bureau of Customs, and the Import Entry and Internal Revenue Declaration, Import Declaration and Entry or Single Administrative Document.

The guidelines shall take effect for VAT refund/credit claims filed starting 01 July 2023.

Reversion of temporary tax rates under the CREATE Act
Revenue Memorandum Circular No. 69-2023 (issued 20 June 2023)

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Effective 01 July 2023, the rates of percentage tax, minimum corporate income tax (MCIT), and regular corporate income tax (RCIT) for proprietary educational institutions and hospitals that were all temporarily reduced to 1% until 30 June 2023 under the CREATE Act in light of the COVID-19 pandemic will revert to the original Tax Code rates below:

Percentage tax	3%
MCIT	2%
Regular corporate income tax for proprietary educational institutions and hospitals	10%

For taxpayers using either a calendar or a fiscal year as their taxable year, the taxable base (*e.g.*, gross income, taxable income or quarterly sales/receipts) shall be deemed as derived or received equally for each month of the calendar or fiscal year/quarter.

ATRIG no longer required for imported feeds, feed ingredients and fertilizers
Revenue Memorandum Circular No. 68-2023 (issued 13 June 2023)

An Authority to Release Imported Goods (ATRIG) from the Bureau of Internal Revenue is no longer required in relation to the importation of feeds, feed ingredients and fertilizers. Hence, the certificate issued by the Bureau of Animal Industry, Fertilizer Pesticides Authority or other concerned agency shall be directly presented to the Bureau of Customs (BOC) to secure the release of the imported goods.

The abovementioned certifying agencies shall be responsible for conducting their own validation of the declared goods to be released from the BOC and for submitting to the BIR the list of importers who secured the certification.

Venue of CAR application for property transfers pursuant to a tax-free exchange
Revenue Memorandum Circular No. 65-2023 (issued 08 June 2023)

Under Revenue Memorandum Circular (RMC) No. 19-2022, a prior BIR ruling is not necessary for implementing tax-free exchanges of properties under Section 40(C)(2) of the Tax Code. Instead, the parties may apply for a Certificate Authorizing Registration (CAR) with the concerned Revenue District Office (RDO).

In this regard, RMC No. 19-2022 provides that the CAR application and documentary requirements for the transferred properties (*i.e.*, real property or shares of stock) pursuant to the tax-free exchange shall be filed with the RDO having jurisdiction over the place where the real property is located or where the issuing corporation (of the transferred shares of stock) is registered.

However, this has been amended by RMC No. 65-2023. Effective immediately, the above CAR application and documentary requirements shall henceforth be filed with the RDO or Large Taxpayers Office having jurisdiction over the place where the transferee or surviving corporation is registered.

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