REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Sec. 151(B)(3); RR No. 13-94	CT- 242-2021 JUL 12 2021	

Person to Contact: Chief, Legal & Legislative Division

Tel. Nos. 926-55-36 /927-09-63

SYCIP GORRES VELAYO & CO.
6750 Ayala Avenue,
1226 Makati City, Philippines

Attention: **Atty. Cheryl Edeline C. Ong**
Partner, Tax Services

Gentlemen:

This refers to your letter dated September 11, 2015 requesting, on behalf of your client, Taiheiyo Cement Philippines Inc. ("TCPI"), for confirmation that the importation of cement clinkers by TCPI is exempt from the 2%[1] excise tax imposed under Section 151(A)(2) of the Tax Code of 1997, as amended.

Background:

TCPI is duly registered with the Bureau of Internal Revenue (BIR) with Taxpayer Identification Number (TIN)

TCPI, a stock corporation, is registered with the Securities and Exchange Commission under Company Registration No. issued on June 26, 2003. It is formerly named "Grand Cement Manufacturing Corporation" before its Articles of Incorporation was amended on April 21, 2003.

It is primarily engaged in manufacturing, buying, selling and dealing in cement products of all kinds, of lime, limestone, plaster and natural and artificial stone; and erect, or buy, lease or otherwise acquire manufactories, kilns, and buildings; to build, maintain and operate manufactories, kiln, warehouses and depots for manufacturing and storing, buying, selling and dealing in cement and other products, and to transport, or cause to be transported the same, and to do any and all things incidental thereto and necessary and proper to be done in connection with all matters and things aforesaid or any of them.

On July 27, 2015, a letter duly signed by the OIC-ACIR, Large Taxpayer Service of the Bureau of Internal Revenue (BIR) was sent to TCPI confirming, based on the Laboratory Report dated July 23, 2015 issued by the Laboratory Section of Excise LT Regulatory Division (ELTRD), that the cement clinker is not a mineral or a mineral product, or among the articles

[1] Now 4% under Republic Act No. 10963 or the TRAIN Law

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covered by the excise tax provisions of the National Internal Revenue Code (Tax Code) of 1997, as amended.

In support of your request, you submitted a BIR Laboratory Report ("Report") dated July 23, 2015 which confirms that the cement clinker is not a mineral or a mineral product, or among the articles covered by the excise tax provisions of the 1997 Tax Code, as amended. The Report provides: "*Clinker is the hard nodules formed when hydraulic cements (principally Portland and related cements) raw materials are burned or clinkered at a suitable temperature. The clinker is ground with a small amount of calcium sulfate in the form of gypsum or anhydrite to the fitness required for an adequate rate of hardening by reaction with water.*"

Upon verification from the ELTRD as to the validity of the Laboratory Report dated July 27, 2015, the Chief of ELTRD confirmed on April 19, 2021, that said Laboratory Report is still valid and subsisting.

In reply, please be informed that under Section 151(A)(2) of the Tax Code of 1997, as amended, a 2%[2] excise tax is imposed on nonmetallic minerals and quarry resources based on the actual market value of the gross output thereof at the time of removal which reads:

> "SEC. 151. Mineral Products. —
>
> (A) Rates of Tax. — There shall be levied, assessed and collected on minerals, mineral products and quarry resources, excise tax as follows:
>
> xxx xxx xxx
>
> (2) On all nonmetallic minerals and quarry resources, a tax of two percent (2%) based on the actual market value of the gross output thereof at the time of removal, in the case of those locally extracted or produced; or the value used by the Bureau of Customs in determining tariff and customs duties, net of excise tax and value-added tax, in the case of importation;"

Mineral products are defined under Section 151(B)(3) of the Tax Code of 1997, as amended, which reads:

> "(B) For purposes of this Section, the term –
>
> xxx xxx xxx
>
> (3) *'Mineral products'* shall mean things produced and prepared in a marketable state by simple treatment processes such as washing or drying, but without undergoing any chemical change or process or manufacturing by the lessee, concessionaire or owner of mineral lands."

From the foregoing, it is clear that the subject cement clinkers are not mineral products as defined under Section 151(B)(3) of the Tax Code of 1997, as amended. Clinkers are not produced and prepared by simple treatment process, but when hydraulic cements raw materials

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are burned or clinkered at a suitable temperature. In the process, it undergoes a chemical change or process by heating to high temperatures mixing limestone, clay, silica sand and iron materials. As a result, a gray, nodular, rocklike solid (clinker) is produced. It is further ground with a small amount of calcium sulfate in the form of gypsum or anhydrite. *(BIR-ELTRD Laboratory Report dated July 23, 2015)* Such being the case, the clinkers are not considered mineral products and accordingly are not subject to the 2% excise tax imposed under Section 151(A)(2) of the Tax Code of 1997, which is now increased to 4% pursuant to the amendment introduced by Section 48 of Republic Act (RA) No. 10963 or the TRAIN Law.

Accordingly, TCPI's importation of clinkers for the production of cement is not subject to the excise tax but subject to the 12% Value-Added Tax (VAT) imposed under Section 107(A) 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,

CAESAR R. DULAY
Commissioner of Internal Revenue

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gps(taiheiyo cement)