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TAX LAW FOR BUSINESS

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Remedies for excise taxes on petroleum products

THANKS to the Supreme Court's decision on Commissioner of Internal Revenue (CIR) v Pilipinas Shell (Shell), GR 188497, February 19, 2014, petroleum companies are now allowed to file a claim for refund of the excise taxes paid on petroleum products subsequently sold to international carriers. Because of this, there is a need to reexamine the remedies available to petroleum companies under existing tax laws.

Section 135 of the National Internal Revenue Code (NIRC) exempts from excise tax petroleum products sold and delivered to: 1) international carriers of Philippine and foreign registry, provided that they use or consume these products outside the country; and 2) tax-exempt entities. In the case of international carriers of foreign registry, petroleum products are exempt

from excise taxes on the condition that their country of registry exempts from excise tax or similar taxes petroleum products sold to Philippine carriers, entities or agencies.

This, however, is not an outright exemption. Under current rules, the excise tax is paid before removal from the place of production, in the case of locally manufactured petroleum, or before release from the custody of the Bureau of Customs, in the case of imported petroleum. Thus, if a petroleum company sells and delivers its products to those exempt from excise taxes, it will have to pursue remedies after the payment of the tax.

In this regard, there are two remedies. In the first, the company can file a claim for excise credit/refund under Sections 204 and 229 of the NIRC. Section 229 speaks of the recovery of taxes erroneously or illegally assessed and collected. In this case, since the tax-paid petroleum was subsequently sold to international carriers or tax-exempt entities, the payment of excise taxes can be considered as erroneously made. Pursuant to Section 229, the company must file the administrative and judicial claim within two years from the time the erroneous payments were made.

In the second, the company may opt to file a claim for product replenishment based on Revenue Regulations (RR) 2-2008. If the company sold and delivered petroleum to international carriers or tax-exempt entities, it can file a claim for product replenishment that covers the volume and excise tax paid on the said transaction. That previously paid excise tax can be used to pay the excise tax due on a subsequent sale or delivery of petroleum to international carriers or tax-exempt entities. Consequently, the company can remove from the place of production a similar volume of petroleum without prepayment of excise taxes due, or a larger volume of petroleum with payment of the difference, or a lesser volume of petroleum with the option to utilize the difference in a future application or recover the same through a claim for refund or tax credit. The claim for product replenishment must be filed within 90 days from the date of delivery to the international carrier or tax-exempt entity.

It must be noted, however, that RR 2-2008 explicitly provides that imported petroleum products shall not be subject to product replenishment under any circumstance. If the claim is made up of locally manufactured and imported petroleum, it shall be disallowed. This means that, to recover the excise taxes paid on imported petroleum sold to international carriers and tax-exempt agencies, pursuant to Section 135 of the NIRC, the only option for petroleum companies is to file an administrative and judicial claim.

This brings us to an interesting legal issue: In the case of locally manufactured petroleum, does the filing of a claim for product replenishment bar the filing of a claim for refund or tax credit, and vice versa? Are the remedies mutually exclusive? The answer is uncertain. What is only clear in RR 2-2008 is that failure to file the claim for product replenishment shall not preclude the filing of a claim for tax credit/refund. Given that the CIR v Shell case has spurred interest among petroleum companies in pursuing excise tax on petroleum claims, our courts may have the occasion to rule on this issue.

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