

J. Y. Interpretation No.697 (March 2, 2012) *

ISSUE: Is it unconstitutional the Commodity Tax Act provides that in a situation of consign process contract the consigned manufacturer be the taxpayer; and where all machine-made cool drinks be subject to commodity tax ?

RELEVANT LAWS:

Articles 7, 19, 23 of the Constitution (憲法第七條、第十九條、第二十三條) ; J.Y. Interpretation Nos. 521, 635, 685 (司法院釋字第五二一解釋、釋字第六三五號解釋、釋字第六八五號解釋) ; Subparagraphs 1, 2, Paragraph 1, Article 2; Article 19; Paragraphs 1, 2, 3, Article 8 of the Commodity Tax Act (貨物稅條例第二條第一項第一款、第二款、第十九條第八條第一項、第二項、第三項) ; Subparagraph 1, Article 32 of the Commodity Tax Act (amended and promulgated on 1997.5.7; effective on 2002.1.1) (貨物稅條例第三十二條第一款 (中華民國八十六年五月七日修正公布，九十一年一月一日施行)) ; Article 32 of the Commodity Tax Act (amended and promulgated on 2009.12.30) (貨物稅條例第三十二條 (中華民國九十八年十二月三十日修正公布)) ; Articles 10, 15, 17 (Paragraph 1), 18 of the Regulations for the Collection of Commodity Tax (貨物稅稽徵規則第十條、第十五條、第十七條第一項、第

* Translated by Chun-Yih Cheng.

** Contents within frame, not part of the original text, are added for reference purposes only.

十八條)；Ministry of Finance Letters 1990.11.1 Tai-Tsai-Suei No.790367324, 1995.11.24 Tai-Tsai-Suei No. 841660961, 1985.11.14 Tai-Tsai-Suei No. 24779, 1983.9.6 Tai-Tsai-Suei No. 36286, Ministry of Finance Order 2009.10.26 Tai-Tsai-Suei No. 09804564950 (財政部中華民國七十九年十一月一日台財稅第七九〇三六七三二四號函、八十四年十一月二十四日台財稅第八四一六六〇九六一號函、七十四年十一月十四日台財稅第二四七七九號函、七十二年九月六日台財稅第三六二八六號函、財政部九十八年十月二十六日台財稅字第〇九八〇四五六四九五〇號令)。

KEYWORDS:

explicitness of law (法律明確性), principle of statutory tax-paying (租稅法律主義), cool drinks (清涼飲料品), commodity tax act (貨物稅條例), indefinite concept of law (不確定法律概念), penalty for tax evasion (漏稅罰), legislative discretion (立法裁量).**

HOLDING: The provision of Subparagraph 2, Paragraph 1, Article 1 of the Commodity Tax Act (hereafter, the Act) that “Commodity tax is levied upon removal of taxable commodities from the manufacturers’ premises or upon importation. The taxpayers are as follows: ... 2. For commodities manufactured on a consign process contract: the manufacturer

解釋文：貨物稅條例(下稱本條例)第二條第一項第二款規定：「貨物稅於應稅貨物出廠或進口時徵收之。其納稅義務人如左：……二、委託代製之貨物，為受託之產製廠商。」與法律明確性原則尚無違背。惟於委託多家廠商分工之情形，立法機關宜考量產製之分工、製程及各種委託製造關係，明定完成應稅貨物之產製階段，作為認定受託

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of the processed taxable goods.” is not contrary to the principle of explicitness of law. However, in a situation where there are several consigned manufacturers for division of works, the legislative body should better consider the division of works, process and all kinds of consign process contracts in the manufacturing process to determine the completion stage of the manufacture of taxable goods so as to identify the consigned manufacturer, and in due course to review and improve the relevant provisions.

Paragraph 1, Article 8 of the Act provides that, “The tax rates for all kinds of machine-made cool drinks are as follows: 1. Diluted natural fruit/vegetable juice: taxed on an ad valorem basis at 8%; 2. Other beverage: tax on an ad valorem basis at 15%.” The provision therein related to cool drinks is not contrary to the principle of explicitness of law. In addition, the above provision imposes commodity tax only on machine-made cool drinks, but not on non-machinemade ones, which is not contrary to the princi-

產製廠商之依據，適時檢討相關規定改進之。

本條例第八條第一項規定：「飲料品：凡設廠機製之清涼飲料品均屬之。其稅率如左：一、稀釋天然果蔬汁從價徵收百分之八。二、其他飲料品從價徵收百分之十五」。其中有關清涼飲料品之規定，與法律明確性原則尚無不合。又上開規定僅對設廠機製之清涼飲料品課徵貨物稅，而未對非設廠機製者課徵貨物稅，並不違反憲法第七條之平等原則。

ple of equality as set forth in Article 7 of the Constitution.

Ministry of Finance Letter 1990.-11.1 Tai-Tsai-Suei No.790367324, which considered a drink based on the quantity of solid content reaching 50%, and Ministry of Finance Letter 1995.11.24 Tai-Tsai-Suei No. 841660961, which considered edible bird's nest drinks imported or manufactured by enterprises as taxable drinks under Article 8 of Commodity Tax Act, are not contrary to the principle of statutory taxpaying.

Subparagraph 1, Article 32 of the Commodity Tax Act, which was amended and promulgated on 1997.5.7 and became effective on 2002.1.1, providing that, "In any of the following circumstances, the taxpayer shall be pursued for payment of taxes and fined from 5 to 15 times the amount of tax evaded: 1. Failing to complete necessary registration in compliance with Article 19, and illegally manufacturing commodities subject to commodity tax." (which penalty was amended to be 1

財政部中華民國七十九年十一月一日台財稅第七九〇三六七三二四號函，以內含固體量是否達到百分之五十作為飲料品之認定標準，及財政部八十四年十一月二十四日台財稅第八四一六六〇九六一號函，對廠商進口或產製之燕窩類飲料，認屬貨物稅條例第八條規定之應稅飲料品，尚不違反租稅法律主義之意旨。

八十六年五月七日修正公布，九十一年一月一日施行之貨物稅條例第三十二條第一款規定：「納稅義務人有左列情形之一者，除補徵稅款外，按補徵稅額處五倍至十五倍罰鍰：一、未依第十九條規定辦理登記，擅自產製應稅貨物出廠者。」（九十八年十二月三十日修正為一倍至三倍罰鍰）與憲法比例原則並無牴觸。

to 3 times on 2009.12.30) is not contrary to the constitutional principle of proportionality.

REASONING: Article 19 of the Constitution provides that the people shall have the duty of paying taxes in accordance with law. And the legal conditions for taxation should comply with the principle of explicitness of law. However, where the legislation utilizes an indefinite concept of law or other abstract concepts, if the meaning is understandable, and is predictable by the regulated, and could be confirmed through judicial review, it may not be considered as being contrary to the principle of explicitness of law (see J.Y. Interpretation No. 521).

Subparagraphs 1, 2, Paragraph 1, Article 2 of the Act provide that, “Commodity tax is levied upon removal of taxable commodities from the manufacturers’ premises or upon importation. The taxpayers are as follows: 1. For commodities manufactured domestically: the manufacturer. 2. For commodity manufactured on a consign process contract:

解釋理由書：憲法第十九條規定，人民有依法律納稅之義務，而法律規範之租稅構成要件，應遵守法律明確性原則。惟立法使用不確定法律概念或其他抽象概念者，苟其意義非難以理解，且為受規範者所得預見，並可經由司法審查加以確認，即不得謂與法律明確性原則相違（本院釋字第五二一號解釋參照）。

本條例第二條第一項第一款、第二款規定：「貨物稅於應稅貨物出廠或進口時徵收之。其納稅義務人如左：一、國內產製之貨物，為產製廠商。二、委託代製之貨物，為受託之產製廠商。」是國內產製應稅貨物者，以產製廠商為納稅義務人。至於委託代製應稅貨物者，則以受託之產製廠商為納稅義務人。但不論係自行產製應稅貨物或是

the manufacturer of the processed taxable goods.” Therefore, where taxable goods are manufactured domestically, the manufacturers are the taxpayers. As regards to taxable goods manufactured by consign process contract, the consigned manufacturers are the taxpayers. However, regardless of whether they are self-manufacturing manufacturers or consigned manufacturers, they should, in accordance with Article 19 of the Act, Articles 10 and 15 of the Regulations for the Collection of Commodity Tax (hereafter the Regulations), bear the obligation cooperation to complete the manufacturer’s registration and product’s registration. After these registrations have been approved by the tax authority, they can then manufacture taxable goods. Further, according to Paragraph 1, Article 17 of the Regulation, the consigned manufacturers may manufacture taxable goods only after they have submitted the consign process contracts to the tax authority for review and the tax authority has approved the same. In addition, according to Article 18 of the Regulations, “Except in cases that follow the

受託產製應稅貨物之廠商，均有依本條例第十九條，以及貨物稅稽徵規則（下稱稽徵規則）第十條、第十五條完成廠商登記及產品登記之協力義務，並經主管稽徵機關准予登記後，始得產製應稅貨物。且受託產製廠商，依稽徵規則第十七條第一項，尚須將委託代製合約書一併送請主管稽徵機關審查，經審查核准後，始得產製應稅貨物。再依稽徵規則第十八條之規定：「應稅貨物使用包裝者，除依第十六條規定辦理及經專案核准之規格外，其包裝上均應以中文載明貨物之名稱及產製廠商之名稱、地址。」本條例第二條第一項第二款之受委託代製廠商，如僅係單一產製廠商獨立完成產製，由其承擔納稅義務，自無疑問。如係多家廠商分工，各自先後所為部分之產製行為，均為完成應稅貨物所必須。本條例第二條第一項第二款之規定，雖未明定何階段之受託產製廠商為貨物稅繳納義務人，尚非不能根據貨物類型特徵及其產製過程認定之。是本條例第二條第一項第二款規定由受委託之產製廠商為納稅義務人，為該等廠商產製前所能預見，並可經由司法審查加以確認，與法律明確性原則尚無違背。惟於委託多家廠商分工之情形，立法機

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provisions in Article 16 herein and where packing specifications are approved under special case status, packed taxable goods shall have the name of the goods as well as the name and address of the manufacturer noted in Chinese on the package.” In respect of the consigned manufacturer as set forth in Subparagraph 2, Paragraph 1, Article 2 of the Act, if there is only one manufacturer completing the manufacturing independently, it is doubtless that this manufacturer should bear the taxpaying obligation. If there are several manufacturers for division of works, with each sequentially engaged in part of the manufacturing process, which is necessary to complete the taxable goods, although the provision of Subparagraph 2, Paragraph 1, Article 2 of the Act does not specify which stage’s consigned manufacturer being the commodity tax taxpayer, it could be ascertained by the specific character and the manufacturing process of the goods. Therefore, Subparagraph 2, Paragraph 1, Article 2 of the Act provides that the consigned manufacturer should be the taxpayer, which is predictable in

關宜考量產製之分工、製程及各種委託製造關係，明定完成應稅貨物之產製階段，作為認定受託產製廠商之依據，適時檢討相關規定改進之。

advance by such manufacturer, and could be confirmed through judicial review, and therefore is not contrary to the principle of explicitness of law. However, in a situation where there are several consigned manufacturers for division of works, the legislative body should better consider the division of works, process and all kinds of consign process contracts used in the manufacturing process to determine the completion stage of the manufacture of taxable goods so as to identify the consigned manufacturer, and in due course to review and improve the relevant provisions.

Paragraph 1, Article 8 of the Act provides that, “The tax rates for all kinds of machine-made cool drinks are as follows: 1. Diluted natural fruit/vegetable juice: taxed on an ad valorem basis at 8%; 2. Other beverage: tax on an ad valorem basis at 15%.” Paragraph 3 of the same Article defines only the term “machinemade”, while without defining the term “cool drinks”. However, so called “cool” is a relative concept, and is not neces-

本條例第八條第一項規定：「飲料品：凡設廠機製之清涼飲料品均屬之。其稅率如左：一、稀釋天然果蔬汁從價徵收百分之八。二、其他飲料品從價徵收百分之十五。」同條第三項雖就「設廠機製」為明文之定義，而未就「清涼飲料品」予以定義。惟所謂「清涼」者，乃相對之概念，並非與溫度有絕對關連，而市售此類飲料種類眾多，立法者實無從預先鉅細靡遺悉加以規定。消費者於購買飲料品後，開封即可飲用，

sarily connected to temperature. There are many such drinks on the market, it is impossible for the legislators to list them all in advance. All drinks which have the character that the consumers can open the cap and drink belong to “cool drinks”. This is not unpredictable by the regulated, and is not contrary to the principle of explicitness of law.

All machine-made cool drinks should be subject to commodity tax as expressly specified in Article 8 of the Act. In addition, Paragraph 3 of the same Article provides that, “The so-called “machine-made cold drinks” in the first Paragraph refer to either one of the conditions below: 1. The drinks are made at fixed premises and sealed in bottles (boxes, cans or barrels) using motor-driven or non-motor driven machinery. 2. The drinks are made at fixed premises where the raw materials or semi-finished products of the drinks are made using motor-driven or nonmotor driven machinery and loaded into a vending machine for mixture and sale.” The quantity of nonmachine made cool

凡符合此一特性者，即屬於清涼飲料品，此非受規範者所不能預見，與法律明確性原則尚無不合。

凡設廠機製之清涼飲料品應課徵貨物稅，本條例第八條第一項定有明文。又同條第三項規定：「第一項所稱設廠機製，指左列情形之一：一、設有固定製造場所，使用電動或非電動之機具製造裝瓶（盒、罐、桶）固封者。二、設有固定製造場所，使用電動或非電動機具製造飲料品之原料或半成品裝入自動混合販賣機製造銷售者。」至於市面上非設廠而以手工或機具調製之清涼飲料品，產量有限，對之課徵貨物稅不符稽徵成本，與設廠產製之清涼飲料品，係以機具裝填、充入或分裝原物料，大量製造運銷出廠，始再轉售與消費者之情形不同。貨物稅之課徵，乃立法者針對國內產製或自國外輸入特定類別貨物所課徵之一種單一階段銷售稅，原則上

drinks, which are mixed and made by hand or tools, is limited on the market. To impose commodity tax on them is not cost-efficient. The situation is different for machine-made cool drinks, which are stuffed and packaged by machine, and mass produced in factories and resold to the consumers. The commodity tax is a single stage sales tax, which is imposed by the legislator on specific categories of goods which are manufactured domestically or imported from abroad. In principle, the target is on the machinemade, mass, and standardized production. The legislative choice to impose tax on cool drinks is based on national economic and fiscal considerations, and is thus not abusive. Therefore, Article 8 of the Act, which imposes commodity tax only on machinemade cool drinks, and not on non-machine made drinks, is not contrary to the principle of equality of Article 7 of the Constitution.

“Other beverage” as defined in Subparagraph 2, Paragraph 1, Article 8 of the Act, does not refer to diluted natural

以設廠集中生產、產量較大與標準化生產為課徵對象。立法者選擇設廠機製之清涼飲料品課稅，係基於國家經濟、財政政策之考量，自非恣意。是本條例第八條僅對設廠機製之清涼飲料品課徵貨物稅，而未對非設廠機製者課徵貨物稅，並不違反憲法第七條之平等原則。

至於本條例第八條第一項第二款「其他飲料品」之定義，除其須非屬同條第一項第一款之稀釋天然果蔬

fruit/ vegetable juice under Subparagraph 1, Paragraph 1 of the same Article, or pure natural or condensed fruit or vegetable juice (jus) in conformance with national standards under Paragraph 2 of the same Article. In addition, the Ministry of Finance Letter 1990.11.1 Tai-Tsai-Suei No. 790367324 explained that, “2. For machine-made canned green bean soup, peanut soup etc, according to the principle of this Ministry’s Letters (1983) Tai-Tsai-Suei No. 36286 and (1985) Tai-Tsai-Suei No. 24779, it should be reviewed whether the quantity of solid content reaches 50%; if not reaching 50%, it should be treated as drink, and subject to the commodity tax at the rate of 15%.” (hereafter 1990 Letter; the above Letter (1983) Tai-Tsai-Suei No. 36286 was abolished by the Ministry of Finance Order 2009.10.26 Tai-Tsai-Suei No. 09804564950.) As such, whether machine-made drinks, which contain drinkable and edible liquid and additions, are subject to commodity tax depends on whether such drinks contain “50% solid” or not. These are explanations made by the competent authority based on their

汁及同條第二項合於國家標準之純天然與濃縮果、蔬菜汁(漿)外，財政部七十九年十一月一日台財稅第七九〇三六七三二四號函示：「二、設廠機製之罐裝綠豆湯、花生湯等，依本部(72)台財稅第三六二八六號函及(74)台財稅第二四七七九號函規定之原則，應查明其內含固體量是否達到百分之五十，其內容量如未達百分之五十以上者，應按飲料品從價徵收百分之十五貨物稅。」(下稱七十九年函，上開(72)台財稅第三六二八六號函業經財政部九十八年十月二十六日台財稅字第〇九八〇四五六四九五〇號令廢止)準此，設廠機製之飲料品，內含可供飲用及食用之液體與添加物，應否課徵貨物稅，以該項飲料品是否「內含固體量達到百分之五十」作為認定標準。此係由主管機關本於職權作成解釋性函釋，以供下級機關於個案中具體判斷，該認定標準符合社會通念對於飲料品之認知，與一般法律解釋方法無違，尚不違反租稅法律主義之意旨(本院釋字第六三五號、第六八五號解釋參照)。另財政部八十四年十一月二十四日台財稅第八四一六六〇九六一號函謂：「廠商進口或產製之燕窩類飲料，核屬貨物稅

competence in order for their subordinate agencies to decide on individual cases. Such standards comply with general concept of the society, and are not contrary to the general principle of interpretation of law, and thus are not contrary to the concept of statutory taxpaying (see J.Y. Interpretation Nos. 635 and 685). In addition, the Ministry of Finance Letter 1995.11.24 Tai-Tsai-Suei No. 841660961 explained that, “edible bird’s nest drinks imported or manufactured by enterprises are taxable drinks under Article 8 of Commodity Tax Act, and are subject to commodity tax according to the law.” This was an explanatory letter issued by the competent authority following the standards of drinks set forth by the above 1990 Letter to decide whether edible bird’s nest drinks are cool drinks or not. The opinion expressed in the Letter complies with general concept of the society regarding cool drinks, and is not contrary to the principle of statutory taxpaying. However, there are a wide variety of drinks, and new products emerge day by day. Whether the deciding standards for cool drinks, which are subject to

條例第八條規定之應稅飲料品，應依法課徵貨物稅。」乃屬主管機關循上開七十九年函釋認定飲料品之標準，就燕窩類飲料是否為清涼飲料之解釋性函釋，符合社會通念關於清涼飲料品概念之認知，亦未違反租稅法律主義。惟飲料品之種類繁多，產品日新月異，是否屬應課徵貨物稅之清涼飲料，其認定標準，有無由立法者以法律或授權主管機關以法規命令規定之必要，相關機關宜適時檢討改進，併此指明。

commodity tax, should be specified in the statute as enacted or in the statutory order of the competent authority as delegated by legislators should be reviewed by the relevant agencies in due course.

Subparagraph 1, Article 32 of the Commodity Tax Act, which was amended and promulgated on 1997.5.7 and became effective on 2002.1.1, provides that, “In any of the following circumstances, the taxpayer shall be pursued for payment of taxes and fined from 5 to 15 times the amount of tax evaded: 1. Failing to complete necessary registration in compliance with Article 19, and illegally manufacturing commodities subject to commodity tax.” (which penalty was amended to be 1 to 3 times on 2009.12.30). The above provision bears the nature of penalty for tax evasion imposed on the taxpayer who does not complete the manufacturer’s registration and product’s registration in accordance with the law and who manufactures taxable goods so as to evade tax. The purpose of imposing a penalty of 5 to 15 times the amount of tax evaded is to

八十六年五月七日修正公布，九十一年一月一日施行之貨物稅條例第三十二條第一款規定：「納稅義務人有左列情形之一者，除補徵稅款外，按補徵稅額處五倍至十五倍罰鍰：一、未依第十九條規定辦理登記，擅自產製應稅貨物出廠者。」（九十八年十二月三十日修正為一倍至三倍罰鍰）上開規定係對納稅義務人未依法辦理廠商登記及產品登記，即自行產製應稅貨物出廠而逃漏稅捐所為之處罰，具漏稅罰性質。其按補徵稅額處五倍至十五倍罰鍰，乃為防止漏稅，以達正確課稅之目的，尚未逾越立法裁量範圍，與憲法比例原則並無牴觸。

prevent tax evasion so as to ensure correct taxation. It is not beyond the legislative discretion and is not contrary to the constitutional principle of proportionality.

Justice Beyue Su Chen filed concurring opinion in part

Justice Yeong-Chin Su filed concurring opinion in which Justice Chun-Sheng Chen joined.

Justice Pai-Hsiu Yeh filed concurring opinion in part and dissenting opinion in part.

Justice Dennis Te-Chung Tang filed dissenting opinion in part.

Justice Mao-Zong Huang filed dissenting opinion.

Justice Chang-Fa Lo filed dissenting opinion

EDITOR'S NOTE:

Summary of facts: Tai-yen and Kuang-chen cooperated with each other for the manufacturing of "Tai-yen Kuangchen collagen bird's nest" and consigned the manufacturing to Hweichi. Because Hwei-chi did not have manu-

陳大法官碧玉提出之部分協同意見書；蘇大法官永欽提出、陳大法官春生加入之協同意見書；葉大法官百修提出之部分不同部分協同意見書；湯大法官德宗提出之一部不同意見書；黃大法官茂榮提出之不同意見書；羅大法官昌發提出之不同意見書。

編者註：

事實摘要：緣A及B二公司合作生產「AB膠原蛋白燕窩」，委由C公司代為產製。因C公司無機械生產設備，亦無工廠登記證，乃委聲請人D食品廠代工，由聲請人負責產品之充填、裝瓶工作。嗣財政部臺灣省南區國

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facturing equipment, and did not have a factory license, it further consigned the manufacturing to the applicant Taifang Food Factory, which was responsible for the stuffing and bottling. Later on, the National Tax Administration of Southern Taiwan Province considered that the products belonged to drinks under Article 8 of the Commodity Tax Act, and were taxable. The applicant was the taxpayer of commodity tax, but failed to complete the registration according to Article 19 and unlawfully manufactured taxable goods. It was decided that the taxpayer should make up the commodity tax at the amount of NTD 347,939, and, according to Subparagraph 1, Article 32, be fined as penalty 10 times the sum at the amount of NTD 3,473,900.

The applicant objected to the decision, and in turn initiated an administrative litigation, but the suit was bindingly rejected. The applicant considered unconstitutional that the related provisions of the Commodity Tax Act are ambiguous, and that the applicant was not the taxpay-

稅局認該產品為貨物稅條例第 8 條所規定之飲料品，係應稅貨物，聲請人為貨物稅納稅義務人，未依第 19 條規定辦理登記而擅自產製應稅貨物，核定應補繳貨物稅 347,393 元，並依第 32 條第 1 款規定，按補繳稅額處 10 倍罰鍰 3,473,900 元。

聲請人不服，循序提起行政訴訟，遭駁回確定，爰認貨物稅條例相關規定不明確，其並非貨物稅納稅義務人，財政部 79 年 11 月 1 日台財稅第 790367324 號函及 84 年 11 月 24 日台財稅第 841660961 號函，就其代工之燕窩類飲料品認定為第 8 條之清涼飲料品，

er of commodity tax; and that the Ministry of Finance Letters 1990.11.1 Tai-Tsai-Suei No.790367324 and 1995.11.24 Tai-Tsai-Suei No. 841660961 determined that the consigned manufactured edible bird's nest drinks were cool drinks under Article 8, and therefore according to Subparagraph 1, Article 32, imposed on the applicant a penalty of 10 times the amount of tax evaded, and applied for interpretation.

進而依第 32 條第 1 款罰處 10 倍罰鍰，均有違憲疑義，聲請解釋。