

16 February 2024

HON. ROMEO D. LUMAGUI, JR.

Commissioner

Bureau of Internal Revenue

Room 511, BIR National Office Building, BIR Road

Diliman, Quezon City

HON. JETHRO M. SABARIAGA

OIC-Assistant Commissioner

Large Taxpayers Service

BIR National Office Building, BIR Road

Diliman, Quezon City

Subject: Request to Review and Revise the Revenue Memorandum Circular No. 112-2023

Dear Hon. Comm. Lumagui and Hon. Asst. Comm. Sabariaga,

Greetings from the European Chamber of Commerce of the Philippines (ECCP)!

We welcome this opportunity of confirming our full support, on behalf of the ECCP Members, to the mandates of your good Office in enforcing the tax policies of our country. We further assure that we promote to our members their compliance to all legal and regulatory mandates of governing agencies.

We are writing, to respectfully request your good Office to review and revisit the issuance of Revenue Memorandum Circular No. 112-2023 (RMC 112-2023), particularly the specific provisions related to the Codex Food Category System of Codex Standard 192-1995 (CXS 192-1995).

We have carefully reviewed the statements, texts and wordings from RMC 112-2023 and noted that important provisions were not included and/or stated differently versus CXS 192-1995.

RMC 112-2023	CXS 192-1995
“....The description for Flavoured Fluid Milk Drinks under 01.1.4 of the Codex is as follows: “Includes all mixes and ready-to-drink fermented or not fermented milk-based drinks with flavourings and/or food ingredients that intentionally impart flavour, excluding mixes for cocoa (cocoa-sugar mixtures, category 05.1.1).....”	“....01.1.4 Flavoured fluid milk drinks Includes all mixes and ready-to-drink fermented or not fermented milk-based drinks with flavourings and/or food ingredients that intentionally impart flavour, excluding mixes for cocoa (cocoa-sugar mixtures, category 05.1.1). Examples, include but are not limited to, chocolate milk, chocolate malt drinks, strawberry-flavoured yoghurt drink, lactic acid bacteria drinks, whey-based drinks, and lassi (liquid obtained by

	<p>whipping curd from the lactic acid fermentation of milk, and mixing with sugar or intense sweetener)....” (Emphasis supplied)</p> <p>NOTE: CXS 192-1995 explicitly provides examples such as chocolate milk and chocolate malt drinks that contain cocoa liquor and/or cocoa powder. Cocoa is explicitly stated in Codex Standard for Chocolates (CODEX STAN 87-1981) under Food Category 05.0 Confectionery of CXS 192-1995.</p> <p>NOTE: Codex Food Category 05.1.1 is a sub-category under the Food Category 05.0 Confectionery which explicitly excludes Flavoured Fluid Milk Drink:</p> <p>“....05.0 Confectionery: Includes all cocoa and chocolate products (05.1), other confectionery products that may or may not contain cocoa (05.2), chewing gum (05.3), and decorations and icings (05.4), or foods produced solely with any combination of foods conforming to these sub-categories.</p> <p>05.1.1 Cocoa mixes (powders) and cocoa mass/cake: Includes a variety of products that are used in the manufacture of other chocolate products or in the preparation of cocoa-based beverages. Most cocoa products have their origin in the cocoa nib, which is obtained from cocoa beans that have been cleaned and freed from the shells. Cocoa mass is obtained from the mechanical disintegration of the nib. Depending on the desired finished chocolate product, the cocoa nib or mass may be treated by an alkalization process that mellows the flavour. Cocoa dust is the fraction of the cocoa bean produced as a product during winnowing and degerming. Cocoa powder is produced by reducing the fat content of cocoa mass or liquor by pressing (including expeller pressing) and molding into a cocoa press cake. The cocoa press cake is disintegrated and ground to cocoa powder. Cocoa liquor is a</p>
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	<p><i>homogeneous flowing paste produced from the cocoa nib, which has been roasted, dried, disintegrated and milled. Cocoa-sugar mixtures contain only cocoa powder and sugar. Chocolate powder for beverages is made from cocoa liquor or cocoa powder and sugar to which flavouring (e.g. vanillin) may be added. Examples include: drinking chocolate powder; breakfast cocoa; cocoa dust (fines), nibs, mass, press cake; chocolate liquor; cocoa mixes (powders for preparing the hot beverage); cocoa-sugar mixture; and dry mixes for sugar-cocoa confectionery. Finished cocoa beverages and chocolate milk are included in category 01.1.4, and most finished chocolate products are included in category 05.1.4....</i> (Emphasis supplied)</p>
<p>“....It should be noted that the said description should satisfy or be aligned with the definition of Fluid Milk under 01.1, the category under which Flavoured Fluid Milk Drinks belongs, as “milk products”....that are <u>obtained by the processing of milk</u>, and may contain food additives and other ingredients functionally necessary for processing. (Underscoring supplied)</p> <p>Therefore, the classification of a product under consideration, as to whether it satisfies the definition of milk product, (i.e., products obtained by any processing of milk, which may contain food additives and other ingredients functionally necessary for the processing”) necessarily entails an analysis of its composition and the production process involved in its manufacture....”</p>	<p>“....01.1 Fluid milk and milk products Includes all plain and flavoured fluid milks based on skim, part-skim, low-fat and whole milk, excluding plain fermented products and plain renneted milk products of food category 1.2. Fluid milks are 'milk products' as defined in CODEX STAN 206-1999, that are obtained by the processing of milk, and may contain food additives and other ingredients functionally necessary for processing. Raw milk (“milk” as defined in CODEX STAN 206- 1999) shall not contain any food additives.....” (Emphasis supplied)</p> <p>NOTE: CXS 192-1995 and CODEX STAN 206-1999 do not mention analysis of composition.</p>
<p>“.....On the other hand, when the Codex Stan explicitly deemed as milk products and, therefore, excluded from the exclusion from the coverage of sweetened beverages and, hence, subject to excise tax....” (Emphasis supplied)</p>	<p>The following Codex Food Categories of CXS 192-1995 provides explicit description and examples of ingredients and food products, including inclusions and exclusions of certain food categories:</p> <p>“....05.0 Confectionery: Includes all cocoa and chocolate products (05.1), other confectionery</p>

	<p>products that may or may not contain cocoa (05.2), chewing gum (05.3), and decorations and icings (05.4), or foods produced solely with any combination of foods conforming to these sub-categories.</p> <p>05.1.1 Cocoa mixes (powders) and cocoa mass/cake: Includes a variety of products that are used in the manufacture of other chocolate products or in the preparation of cocoa-based beverages.....Cocoa-sugar mixtures contain only cocoa powder and sugar. Chocolate powder for beverages is made from cocoa liquor or cocoa powder and sugar to which flavouring (e.g. vanillin) may be added. Examples include: drinking chocolate powder; breakfast cocoa; cocoa dust (fines), nibs, mass, press cake; chocolate liquor; cocoa mixes (powders for preparing the hot beverage); cocoa-sugar mixture; and dry mixes for sugar-cocoa confectionery. Finished cocoa beverages and chocolate milk are included in category 01.1.4, and most finished chocolate products are included in category 05.1.4...."</p> <p>14.0 Beverages, excluding dairy products: This major category is divided into the broad categories of non-alcoholic (14.1) and alcoholic (14.2) beverages. Dairy-based beverages are included in 01.1.4....." (Emphasis supplied)</p>
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With the said outcome of our careful review of RMC 112-2023 and CXS 192-1995, including the most relevant regulations of the Philippine FDA, we respectfully submit our request to review and re-visit the issuance of your good Office's stipulations in RMC 112-2023.

We look forward to receiving your prompt attention and response to this request. We will be very pleased to discuss the matter at your most convenient time. May we kindly request for you to reach out to the ECCP F&B Advocacy Committee, advocacy@eccp.com, _____(indicate contact details) and we will gladly organize with the Codex experts in the country a clarificatory dialogue on the mentioned provisions of the Codex Standards.

We thank you in advance for the kind consideration and we look forward to a fruitful collaboration.

Very truly yours,

Florian Gottein
ECCP Executive Director

Paulo Duarte
ECCP President

Helen Grace Baisa
ECCP Vice President

Copy furnished:

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