

P&A's **Let's Talk Tax** column appears in The Economy section of **BusinessWorld** every Tuesday.

Unleashing the power from biofuels

Let's Talk Tax
BusinessWorld, April 14, 2009
By: Deo D. Saludario



Realizing the need to strengthen our national policies on renewable energy, Congress, with the support of the Executive Branch, legislated Republic Act (RA) No. 9367, also known as the "Biofuels Act of 2006." It was signed by the President on January 17, 2007.

More than two years after the signing of the said Act, however, the Bureau of Internal Revenue (BIR) has yet to issue the guidelines for the implementation of the tax incentives under said Act. A draft Revenue Regulations (RR) was presented for public comment by the BIR in December last year, but this has yet to be finalized and issued.

RA 9367, touted to be the first legislation of its kind in Southeast Asia, aims to promote the use, exploration and development of biofuels as an alternative source of energy, with the broader goals of reducing dependence on imported fuels; promoting the protection of public health, the environment, and natural ecosystems; and expanding opportunities for livelihood consistent with ensuring sustainable economic growth.

Biofuels are alternative fuels that are not composed substantially of petroleum or imported crude oil. These are made from biomass or organic matter such as plants, including their residues and fibers;

animal waste; industrial waste and the biodegradable component of solid waste, primarily used for motive, thermal and power generation, with quality specifications in accordance with the Philippine National Standards (PNS).

Bioethanol is produced from feedstock and other biomass, while biodiesel is derived from vegetable oils or animal fats and other biomass-derived oils.

The Biofuels Act requires that all liquid fuels for motors and engines to be sold in the Philippines should contain locally sourced biofuels.

Within two years from the effectivity of the law, oil companies are required to achieve a minimum of 5% bioethanol component out of their annual total volume gasoline fuel actually sold and distributed. A minimum of 10% bioethanol blend may be required within four years from the effectivity of the law, upon the recommendation of the National Biofuels Board (NBB).

In case of supply shortage of bioethanol, oil companies may be allowed to import bioethanol to the extent of the shortage, subject to requirements prescribed under the regulations issued by the Department of Energy (DoE).

In the case of biodiesel, a minimum of 1% biodiesel blend in all diesel engine fuel distributed and sold in the country is required within three months from the effectivity of the law. This minimum may be raised to 2% within two years from the effectivity of the law, upon the recommendation of the NBB.

The law instituted tax incentives to encourage investment in production, distribution and use of biofuels. Locally manufactured and imported biofuel components (i.e., bioethanol and biodiesel) have zero (P0.00) specific tax while the gasoline and diesel fuel components remain subject to prevailing specific tax rates. This was reiterated in the draft RR.

Sale of raw materials used in the production of biofuels such as, but not limited to, coconut, jatropha, sugarcane, cassava, corn, and sweet sorghum are exempt from value added tax (VAT). In the case of feedstocks, the draft RR further clarifies that exemption from VAT applies only to biomass such as feedstocks used immediately as raw materials in the production/manufacture of biofuels.

Hence, in case such feedstocks are used in making a product (e.g., coconut oil) that is subsequently sold and used as a raw material in the production of biofuels, the feedstocks are not exempt from VAT. Likewise, sale of the coconut oil, even if it is to be used as raw material for biofuel production, shall also be subject to 12% VAT.

Sale of biofuels by the manufacturers shall be subject to zero percent (0%) VAT, since it is fuel generated from renewable sources of energy. Considering, therefore, that it is a zero-rated sale, the input tax directly attributable to such sale may be claimed by the manufacturer for issuance of a tax credit certificate or cash refund.

As to the sale by oil companies of biofuel blends, only the gasoline or diesel portion of the biofuel blends shall be subject to 12% VAT. The bioethanol or biodiesel components of such blends shall be treated as zero-rated.

Accordingly, the draft regulations required that the VAT sales invoice should indicate separately the percentages of gasoline or diesel and biofuel components as well as their respective quantities and amounts of sale.

The draft regulations likewise prescribe the administrative and documentary requirements applicable to the importation of bioethanol fuels in case of local supply shortage, as well as to the domestic sale of bioethanol fuels. Failure to comply with the regulations may constitute grounds for disallowance of subsequent importation or sale of bioethanol fuels.

Moreover, failure to meet the PNS quality specifications prescribed for the bioethanol blend shall be considered a prima facie evidence of non-payment of excise taxes by the seller oil company. This may also be ground for the revocation of the oil company's BIR Permit to Operate and for the issuance of a written endorsement to the DoE recommending the cancellation of the oil company's Certificate of Accreditation.

The enactment of the Biofuels Act promises to bring about the production of clean, safe, efficient and cost-effective transport fuels and the creation of opportunities for livelihood. A number of companies have already made investments on biofuel production and have been accredited by DoE. Up to now, however, they have not been entitled to the incentives under the law in the absence of the implementing revenue regulations. This incentive regulation may be a critical factor in unleashing the power of biofuels to achieve the objectives of the Biofuels Act.

(The author is a tax manager at Punongbayan & Araullo, a member firm within Grant Thornton International Ltd. Readers may send comments or inquiries via e-mail to Deo.Saludario@pna.ph or call 886-5511.)