



DEPARTMENT
OF FINANCE

DEPARTMENT
OF ENERGY



JOINT DEPARTMENT ORDER No. 1 - 2005

**ADOPTING TRANSITIONAL RULES FOR THE IMPLEMENTATION OF REPUBLIC
ACT NO. 9337 IMPOSING VALUE-ADDED TAX ON CERTAIN PETROLEUM
PRODUCTS AND OTHER PURPOSES**

WHEREAS, Republic Act No. 9337, otherwise known as the "VAT Reform Law", imposes for the first time a value-added tax ("VAT") on certain goods and services, including petroleum products;

WHEREAS, Section 9(a) of the VAT Reform Law, as applicable to a first-time VAT-liable entity such as a seller/refiner/dealer of petroleum products, allows a transitional input tax credit of two (2%) percent of the value of its beginning inventory of goods, materials or supplies, creditable against the output VAT;

WHEREAS, a seller/refiner/dealer of petroleum products is required by issuances of the Department of Energy ("DOE") to maintain a minimum inventory of goods to ensure an adequate supply of petroleum products in the local market;

WHEREAS, Executive Order No. 440, was issued on 29 June 2005 lowering the import duties on petroleum products (*i.e.* from 5% to 3% for crude oil and petroleum products, from 3% to 0% for liquefied petroleum gas or LPG, referred to herein as "Reduced Tariff Rates") to mitigate the impact of the imposition of VAT on these basic commodities at the time "of effectivity of R.A. 9337 or the VAT Reform Law";

WHEREAS, the VAT Reform Law took effect on 1 July 2005, the date stated in the VAT Reform Law, but such effectivity was temporarily suspended on 1 July 2005 upon the Supreme Court's issuance of a Temporary Restraining Order ("TRO") in G.R. No. 168056, "ABAKADA, et al. vs. Executive Secretary, et al.";

WHEREAS, on 1 September 2005, the Supreme Court upheld the constitutionality of the VAT Reform Law and, on 18 October 2005, issued its Resolution dismissing the Motions for Reconsideration filed by the Petitioners, affirming its Decision with finality, and lifting the TRO;

WHEREAS, pursuant to Revenue Regulations No. 16-2005, the VAT Reform Law shall be fully implemented starting 1 November 2005;

WHEREAS, with respect to oil companies, refiners and dealers of petroleum products, the beginning inventory of goods for purposes of Section 9 of the VAT Reform Law, consists for the most part of the minimum inventory required by the DOE, including such volume of imported petroleum crudes and products for which tariff duties were already paid at the rate of 5% for crude oil and petroleum products or 3% for LPG, herein referred to as "Original Tariff Rates";

[Handwritten signature]

WHEREAS, to put in effect the intent of EO 440 to mitigate the impact of the first-time imposition of VAT on petroleum crudes and products, there is a need for specific measures to implement the recognition of the transitional input tax and implementation of the Reduced Tariff Rates on the inventory of petroleum crudes and products existing on 31 October 2005;

WHEREFORE, for and in consideration of the foregoing premises, the Department of Finance and Department of Energy hereby promulgate this Order to direct and implement the measures contained and under the terms and provisions provided herein:

1. Coverage. These rules shall cover only such petroleum crudes and products that are made subject to VAT under the VAT Reform Law such as crude oil, LPG and refined petroleum ("Crudes and Petroleum Products"), and shall exclude petroleum crudes and products that were already subject to VAT prior to the VAT Reform Law such as, among others: processed gas, lubricating oils and basestocks, grease, wax, petrolatum, and solvents.
2. Deferred Availment of Transitional Input Tax. A seller/refiner/dealer may, at its option, credit the transitional input tax on the inventory of Crudes and Petroleum Products existing on 31 October 2005 immediately or over a period not exceeding one (1) year from 1 November 2005, provided that such crediting over a period not exceeding one year shall be made quarterly in equal amounts.
 - a. Taxpayers who opt to credit the transitional input taxes over a period not exceeding one year shall file with the BIR district office having jurisdiction over the taxpayer such inventory list prescribed in and within the period provided in Revenue Regulations No. 16-2005.
 - b. The inventory list shall be accompanied by a written request for the deferred availment of transitional input tax indicating therein the proposed availment schedule.
 - c. The written request and the proposed availment schedule shall be subject to verification (including, if necessary, actual inspection of the inventory) and approval by the appropriate BIR office. The action on the written request and proposal shall be issued by the BIR not later than fifteen (15) days from receipt thereof.
 - d. The transitional input tax shall be based on the value of the inventory of Petroleum Products net of the difference between the Original Tariff Rates and the Reduced Tariff Rates recovered pursuant to Section 3 below.
3. Recovery of Tariff Differential. The Reduced Tariff Rates on Crudes and Petroleum Products provided under EO 440 shall apply to the importation of Crudes and Petroleum Products effective on the dates provided herein. For this purpose:
 - a. Persons or entities that were liable and had paid for the tariff duties at the Original Tariff Rates for their importations of Crudes and Petroleum Products for which import entries were filed from 16 September to 31 October 2005 and which Crudes and Petroleum

Products form part of their inventory as of 31 October 2005 shall be entitled to claim from the Bureau of Customs a credit in an amount equivalent to the difference between the Original Tariff Rates and the Reduced Tariff Rates for such duties paid. Such credit shall not be transferable and can only be used to offset future duties due from the person or entity to whom it was issued.

- b. Persons or entities qualified for credit in (a) above shall apply in writing with the District Collector at the port where the subject Crudes and Petroleum Products were entered. Such application shall be filed together with a certified true copy of the entry and a copy of the official receipt showing proof of payment of complete duties and taxes.
 - c. If the application is found to be in order, the District Collector shall cause the preparation of a Tax Credit Certificate in an amount equal to the tariff differential, which certificate shall be signed by the Commissioner of Customs. Action on the application shall be issued not later than thirty (30) days from receipt thereof.
 - d. The Tax Credit Certificate may be utilized within two (2) years from 1 November 2005, or until 1 November 2007, based on a schedule of its application agreed upon between the Bureau of Customs and said importer.
4. Implementing Agencies. The Bureau of Internal Revenue and Bureau of Customs shall issue, as necessary, such additional rules, procedures or forms/documentation to implement this Department Order.

This Joint Department Order shall take effect immediately and shall continue to be in effect unless otherwise revoked. All previous instructions or issuances contrary hereto are hereby revoked or amended accordingly.

Issued this 28th day of October 2005, in the City of Manila.

DEPARTMENT OF FINANCE

By:



MARGARITO B. TEVES
Secretary

000288

DEPARTMENT OF ENERGY

By:



RAPHAEL P.M. LOTILLA
Secretary