December 10, 2019

BIR RULING NO. 780-19

Republic Act No. 9513; BIR Ruling No. 078-10

Aquende Yebra Aniag Loon & Associates
AYALA Law Offices, Suite 2302, 23/F Corporate Center
139 Valero St., Salcedo Village, 1200 Makati City

Attention: *AAA*
BBB

Gentlemen :

This refers to your letter dated November 19, 2018 requesting on behalf of Archemicals Corp. confirmation that being a Renewable Energy (RE) Developer of Biomass Resources (Manufacturer of Biodiesel), Archemicals Corp. is entitled to zero percent (0%) value-added tax (VAT) on its sale of energy generated from renewable resources and purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities pursuant to Republic Act (RA) No. 9513, otherwise known as, the "Renewable Energy Act of 2008."

Documents submitted show that Archemicals Corp. (TIN: 000-000-000) is a corporation organized and existing under the laws of the Philippines, duly registered with the Securities and Exchange Commission (SEC) with SEC Company Registration No. CS201539357; and that it is likewise registered with the Department of Energy (DOE) under Certificate of Registration No. RE-B2017-01-124 dated February 27, 2017 as Renewable Energy (RE) Developer of Biomass Resources, with its biodiesel plant located in Brgy. Natumolan, Tagoloan, Misamis Oriental.

In reply thereto, please be informed that under Section 4.108-5 of Revenue Regulations (RR) No. 16-05, as amended, it is provided that the sale of power or fuel may be entitled to zero percent (0%) VAT provided that the power or fuel is generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal and steam, ocean energy, and other emerging sources using technologies such as fuel cells and hydrogen fuels. The aforesaid Section states:

"SEC. 4.108-5. Zero-Rated Sale of Services. —

(b) Transactions Subject to Zero Percent (0%) VAT Rate. — The following services performed in the Philippines by a VAT-registered person shall be

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subject to zero percent (0%) VAT rate:

xxx xxx xxx

(7) Sale of power or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal and steam, ocean energy, and other emerging sources using technologies such as fuel cells and hydrogen fuels; Provided, however, that zero-rating shall apply strictly to the sale of power or fuel generated through renewable sources of energy, and shall not extend to the sale of services related to the maintenance or operation of plants generating said power.

xxx xxx xxx"

Accordingly, the sale by Archemicals Corp. of renewable energy (Biodiesel) produced from its plant located in Brgy. Natumolan, Tagoloan, Misamis Oriental shall be subject to zero percent (0%) VAT.

Moreover, Section 15 of RA No. 9513 provides that:

"SEC. 15. Incentives for Renewable Energy Projects and Activities. — RE Developers of renewable energy facilities, including hybrid systems, in proportion to and to the extent of the RE component, for both power and non-power applications, as duly certified by the DOE, in consultation with the BOI, shall be entitled to the following incentives:

xxx xxx xxx

(g) Zero Percent Value-Added Tax Rate. —

xxx xxx xxx.

All RE Developers shall be entitled to zero-rated value-added tax on its purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities.

xxx xxx xxx."

Clearly, RA No. 9513 intended to exclude RE Developers from the coverage of the 12% VAT on their local purchases of goods and services needed for the development, construction and installation of their power plant facilities. Under said law, the local purchases of goods and services by RE Developers are subject to zero percent (0%) VAT provided that they are needed for the development, construction and installation of their power plant facilities.

Thus, the suppliers/sellers of goods and services of Archemicals Corp., it being a DOE-certified RE Developer, should not pass on 12% VAT to the latter's purchases of goods and services that will be used by it in its development, construction and installation of power plant facilities in Brgy. Natumolan, Tagoloan, Misamis Oriental. *(BIR Ruling*

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No. 078-2010 dated September 23, 2010)

Likewise, the grant of VAT zero-rating shall be subject to post audit verification by the BIR whether the purchased goods/services were indeed utilized in the development, construction and installation of its power plant facilities in Brgy. Natumolan, Tagoloan, Misamis Oriental. Finally, the processing of application for VAT zero-rated transactions should be done pursuant to Revenue Memorandum Order (RMO) 7-2006, in relation to RR No. 16-2005, as amended.

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be disclosed that the facts are different, then this ruling shall be considered null and void.

Very truly yours,

(SGD.) CAESAR R. DULAY
Commissioner of Internal Revenue

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