REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Republic Act (RA) No. 9136; Revenue Memorandum Circular (RMC) No. 011-12
BIR Ruling No. 020-02
OT- 013 - 2024
FEB 27 2024

NATIONAL POWER CORPORATION
BIR Road corner Quezon Avenue
Diliman, Quezon City

Attention: **Mr. Pio J. Benavidez**
President

Gentlemen:

This refers to your request for confirmation that the Universal Charge for Missionary Electrifieation (UCME) subsidy remitted by the Power Assets and Liabilities Management Corporation (PSALM) to National Power Corporation (NPC) is not subject to Twelve Percent (12%) value-added tax (VAT) pursuant to Republic Act (RA) No. 9136, otherwise known as "Electric Power Industry Reform Act of 2001" (EPIRA), the National Internal Revenue (Tax Code) of 1997, as amended, and other applicable laws and revenue regulations.

It is represented that NPC is a government owned and controlled corporation (GOCC) primarily mandated to provide missionary electrification in the off-grid areas in the country; that PSALM is a GOCC tasked with the management of the collection of the UCME, subject to the supervision and approval of the Energy Regulatory Commission (ERC); that New Power Providers (NPPs) are private power companies which have been competitively selected to take over the electrification function of NPC in the areas not connected to the grid, and authorized by the ERC to receive UCME subsidies; that Qualified Third Parties (QTPs) are private electric power providers which serve the remote and unviable areas in the off-grid; that UCME subsidy is a fund collected by the distribution utilities and/or electric cooperatives from the nationwide consumers and remitted to PSALM, which holds the said funds in trust, in accordance with the approval of the ERC; that PSALM then transfers the UCME funds to NPC, subject to a prior order from the ERC; that as provided for by the EPIRA, the UCME subsidy is one of the sources of NPC to be used to finance its missionary electrification since NPC is not allowed to bill the True Cost Generation Rate (TCGR) in the off-grid areas; and that on June 06, 2013, the ERC, in Case No. 2010-063RC rendered a decision authorizing the NPC to pay the UCME plus the applicable VAT to NPP. Hence this request.

In reply, please be informed that the Bureau of Internal Revenue (BIR), in BIR Ruling No. 020-02 dated May 13, 2002 held that the Universal Charges to be collected by the distribution utilities do not belong to PSALM and since they would not redound to its benefit, the same would not be considered in the nature of income, to wit:

> *"D. Collection of Universal Charge by distribution utilities is not part of their taxable revenues nor will it be part of their gross receipts for purposes of determining their franchise taxes. Likewise, the*

collection of Universal Charge by PSALM will not be considered as taxable income nor will it form part of its gross receipts for VAT purposes.

The Universal Charge will be collected from all end-users by the distribution utilities. These charges will be remitted to PSALM and will be used exclusively for the liquidation of the stranded debts and stranded costs of NPC as well as qualified stranded contract costs of distribution utilities resulting from the restructuring of the industry. The EPIRA provides that the Universal Charge is a non-bypassable charge.

xxx xxx xxx

On the other hand, the Universal Charge received by PSALM will not be subject to income tax since it will not be in the nature of income as defined in Sec. 32(A) of the Tax Code of 1997, *which includes gains, profits, and income derived from salaries, wages, or compensation for personal services of whatever kind and in whatever form paid, or from professions, vocations, trades, business, commerce, sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interests, rents, dividends, securities, or transactions or any business carried on for gain or profits, and income derived from any source whatever. Income, in a broad sense, means all wealth that flows into the taxpayer other than as a mere return of capital. (Section 36, Revenue Regulations No. 2, otherwise known as the Income Tax Regulations). The Universal Charge is not a flow of wealth to PSALM as it would not accrue to its benefit but would be remitted to the Special Trust Fund, as provided under the EPIRA. PSALM is just the administrator of the fund, which shall be disbursed/distributed to its respective beneficiaries xxx xxx xxx.*

Neither can the Universal Charge be deemed part of the gross receipts of PSALM for VAT purposes. *The term "gross receipts" means the total amount of money or its equivalent representing the contract price, compensation or service fee, including the amount charged for materials supplied with the services and deposits or advance payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person. The Universal Charge is not compensation for services performed by PSALM. While it is authorized under the EPIRA to receive said charges, it is earmarked to be utilized for purposes mentioned in the immediately preceding paragraph." (Emphasis Supplied)*

Premises considered, since the UCME subsidy fund collected by the distribution utilities and/or electric cooperatives from the consumers, which are eventually remitted, in trust, to PSALM for transfer to NPC, is not considered as a flow of wealth on the part of PSALM and/or NPC and cannot be considered as part of their gross receipts. Hence, the same is not subject to VAT pursuant to the Tax Code of 1997, as amended.

On the part of the NPPs/QTPs who take over the generation function of NPC in the remote and unviable areas in the off-grid under Alternative Electric Service for Isolated Villages scheme, such payment to NPPS/QTPs from UCME fund for merchant electrification is subject to zero-rated VAT pursuant to Section 6 of RA No. 9136, unless such NPPs/QTPs are registered with the Cooperative Development Authority and considered as electric cooperatives enjoying VAT-exempt privilege pursuant to RA No. 9520.

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,

ROMEO D. LUMAGUI, JR.
Commissioner of Internal Revenue

K-1