REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
National Office Building
Quezon City

Sections 105 and 108, Tax Code; Revenue Memorandum Circular No. 56-2002
VAT Ruling No. 003-08
VAT- 025-2024
APR 29 2024

OFFICE OF THE PRESIDENT – PROVIDENT FUND MANAGEMENT OFFICE
Office of the President of the Philippines
Malacañang Complex
J.P. Laurel Street
San Miguel, Manila, 1005

Attention: **ATTY. LYNN DANAO-MORENO, JD, MPM, CESO II**
Assistant Executive Secretary
General Government Administration Office, and Executive Director

Gentlemen:

This refers to your letter on behalf of the Office of the President – Provident Fund Management Office requesting to clarify whether health and maintenance organization ("**HMO**") services availed of/purchased by the Office of the President – Provident Fund (the "**Fund**") for the benefit of its members from Maxicare Healthcare Corporation ("**Maxicare**") is subject to twelve percent (12%) value-added tax ("**VAT**").

Background

1. The Fund was established by virtue of Memorandum Order ("**MO**") No. 109, issued by former President Joseph Ejercito Estrada on August 15, 2000, to provide supplementary benefits to member-employees.

2. MO No. 109 was issued pursuant to Section 41 of the General Provisions of Republic Act ("**RA**") No. 7180, otherwise known as the F.Y. 1992 General Appropriations Act,[1] as implemented by Administrative Order ("**AO**") No. 279, series of 1992.[2]

[1] Dated January 15, 1992.
[2] Dated May 5, 1992.

3. Section 41 of the General Provisions of RA No. 7180 mandated the establishment of agency Provident Funds to be sourced from service fees collections, and for the Office of the President to promulgate rules and regulations for the same.

4. Consequently, the late President Corazon C. Aquino issued AO No. 279 prescribing the rules and regulations for the establishment and administration of Provident Funds for agencies covered by Section 41 of the General Provisions of RA No. 7180.

5. The initial sources of the Fund are the President's social fund in the amount of PhP5.0 million and the Office of the President Trust Fund in the amount of PhP10.0 million. Also, member-employees shall contribute monthly to the Fund equivalent to three percent (3%) of their monthly basic salary through payroll deduction, and the Office of the President shall provide a counterpart contribution equivalent to six percent (6%) of the member-employees' monthly basic salary, which may vary over the years depending on the availability of funds. The Fund may also accept donations from various sources.

6. Contributions to the Fund are withdrawable only upon retirement, death, separation from service, or permanent physical disability of the member-employees.

7. Pursuant to MO No. 109 and its implementing rules and regulations, the Board of Trustees may provide various benefits to member-employees, and invest the funds. Any income derived by the Fund is being distributed to the member-employees in the form of annual dividends and patronage refund for the loaning facility being availed of by member-employees. Aside from dividends and patronage refund, member-employees also receive other benefits such as anniversary bonus, Christmas tokens, one-time accident insurance, and recently, an HMO purchased from Maxicare.

8. Contrary to the position of Maxicare, the Office of the President – Provident Fund Management Office maintains that the Fund, being in the nature of a retirement fund, is exempt from tax pursuant to Section 32(B)(6) of the Tax Code, which provides retirement benefits, pensions, gratuities, etc. are excluded from the gross income, and therefore, non-taxable.

In reply, please be informed that Sections 105 and 108 of National Internal Revenue Code of 1997, as amended ("**Tax Code**"), provide that a twelve percent (12%) VAT shall be levied, assessed and collected based on the gross sales derived by entities rendering services, to *wit*:

> *"SEC. 105. Persons Liable. - Any person who, in the course of trade or business, sells barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code.*
>
> *xxx xxx xxx*
>
> *The phrase "in the course of trade or business" means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a non-stock, nonprofit*

private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity.

xxx xxx xxx

SEC. 108. Value-added Tax on Sale of Services and Use or Lease of Properties. -

(A) Rate and Base of Tax. - There shall be levied, assessed and collected, a value-added tax equivalent to twelve percent (12%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties.

*The phrase "**sale or exchange of services**" means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, including those performed or rendered by construction and service contractors; stock, real estate, commercial, customs and immigration brokers; lessors of property, whether personal or real; warehousing services; lessors or distributors of cinematographic films; persons engaged in milling processing, manufacturing or repacking goods for others; proprietors, operators or keepers of hotels, motels, rest houses, pension houses, inns, resorts; proprietors or operators of restaurants, refreshment parlors, cafes and other eating places, including clubs and caterers; dealers in securities; lending investors; transportation contractors on their transport of goods or cargoes, including persons who transport goods or cargoes for hire another domestic common carriers by land relative to their transport of goods or cargoes; common carriers by air and sea relative to their transport of passengers, goods or cargoes from one place in the Philippines to another place in the Philippines; sales of electricity by generation companies, transmission by any means entity, and distribution companies, including electric cooperatives; services of franchise grantees of electric utilities. telephone and telegraph, radio and television broadcasting and all other franchise grantees except those under section 119 of this Code, and non-life insurance companies (except their crop insurances), including surety, fidelity, indemnity, and bonding companies; and similar services regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties.*

xxx xxx xxx

For purposes of this section, the term "gross sales" means the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits and advanced payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person, which the purchaser pays or is obligated to pay to the seller in consideration of the sale, barter, or exchange of services that has already been rendered by the seller and the use or lease of properties that have already been supplied by the seller, excluding value-added tax and those amounts earmarked for payment to third (3rd) party or received as reimbursement for payment on behalf of another which do not redound to the benefit of the seller as provided under relevant laws, rules or regulations: Provided, That for long-term contracts for a period of one (1) year or more, the invoice shall be issued on the month in which the service, or use or lease of properties is rendered or supplied." (Emphases and underscoring supplied)

Under Revenue Memorandum Circular ("**RMC**") No. 56-2002,[3] citing Court of Tax Appeal Case No. 6166, entitled "*Philippine Health Care Providers, Inc. vs. The Commissioner of Internal Revenue,*" dated April 05, 2002, the Bureau of Internal Revenue ("**BIR**") clarified that HMO providers are not actually rendering medical service but merely acting as a conduit between the members and their accredited and recognized hospitals and clinics. What is being taxed are the services rendered by HMO providers in providing and arranging for the provisions of health care services to its respective members in exchange for a pre-negotiated, pre-paid membership fees. Therefore, sale by HMO providers of HMO services to its customers are subject to twelve percent (12%) VAT based on their gross receipts, unless expressly exempted by any law, rules or regulations.[4]

A perusal of AO No. 279, MO No. 109, the Tax Code and other relevant laws, rules and regulations, shows that no exemption from tax of whatever nature, whether direct or indirect, such as VAT, is granted to the income derived or purchases of goods or services by the provident funds established pursuant to Section 41 of the General Provisions of RA No. 7180. The absence of an express statutory provision exempting the subject transaction from VAT stimulates the inevitable application of Sections 105 and 108 of the Tax Code. Consequently, Maxicare's sale of HMO services to the Fund is subject to twelve percent (12%) VAT.

In establishing tax exemptions, it should be borne in mind that taxation is the rule, exemption is the exception. Accordingly, statutes granting tax exemptions must be construed in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. One who claims an exemption from tax payments rests the burden of justifying the exemption by words too plain to be mistaken and too categorical to be misinterpreted.[5] It cannot be over-emphasized that tax exemption represents a loss of revenue to the government and must, therefore, not rest on vague inference. Exemption from taxation is never presumed. For tax exemption to be recognized the grant must be clear and express; it cannot be made to rest on doubtful implications.

The legal bases raised by the Fund to support the exemption of the sale of HMO service by Maxicare to the Fund from twelve percent (12%) VAT are: (1) the establishment of the Fund was mandated by law, hence, exempt from taxes; and (2) Section 32(B)(6) of the Tax Code. This Office is of the opinion that the cited legal bases are misplaced based on the following grounds:

First, while it is true that the Fund is established by law, as thoroughly discussed above, there are no provisions in the same granting any tax exemption. Therefore, it cannot be concluded that its purchases are exempt from tax, such as VAT.

Second, income tax and VAT are two separate and distinct internal revenue taxes. Section 32(B)(6) of the Tax Code is a provision under the chapter for income tax. Hence, unless otherwise stated, income tax provisions (such as Section 32(B)(6) of the Tax Code) cannot be used in determining whether a particular transaction is subject to VAT.

Lastly, Section 32(B)(6) of the Tax Code refers to the exclusion of retirement benefits, pensions, gratuities, and other similar benefits received by employees under certain laws (i.e.,

---

[3] Taxability of Health Maintenance Organizations (HMOs) for VAT purposes, December 13, 2002.
[4] VAT Ruling No. 003-08, March 26, 2008.
[5] *Michel J. Lhuiller Pawnshop, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 166786, May 3, 2006; BIR Ruling No. OT-181-2021, May 19, 2021.

RA No. 7641,[6] reasonable private benefit plan maintained by the employer, RA No. 8291,[7] or RA No. 8282[8]) from their respective gross income subject to income tax. On the other hand, the subject matter of this request pertains to the purchase of HMO services by the Fund. Clearly, they refer to different transactions. Hence, Section 32(B)(6) of the Tax Code is not applicable to the subject matter.

Having all these in regard, this Office hereby rules that the sale by Maxicare of HMO services to the Fund is subject to twelve percent (12%) VAT.

This ruling is issued on the basis of the foregoing facts as represented. However, if upon investigation it shall 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

[6] An Act Amending Article 287 of Presidential Decree No. 442, as Amended, Otherwise Known as The Labor Code of the Philippines, by Providing For Retirement Pay to Qualified Private Sector Employees in the Absence of Any Retirement Plan in the Establishment, December 9, 1992.
[7] The Government Service Insurance System Act of 1997, May 30, 1997.
[8] Social Security Act of 1997, May 1, 1997.