REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Quezon City

Sec. 60 (B) NIRC of 1997, as amended
Revenue Memorandum Circular No. 39-2014
BIR Ruling No. 76-2012
OT-0293-2020
JUN 02 2020

NATIONAL HOUSING AUTHORITY
PROVIDENT FUND ASSOCIATION, INC.
National Housing Authority Compound Elliptical Road,
Diliman, Quezon City

Attention: **WILMA D. HERNANDEZ-MENDOZA**
Chairperson

Gentlemen:

This refers to your letter dated May 22, 2019 requesting, on behalf of the **NATIONAL HOUSING AUTHORITY PROVIDENT FUND ASSOCIATION, INC.** ("NHA-Provident Fund Association"), for tax exemption under Section 60 (B) of the National Internal Revenue Code (NIRC) of 1997, as amended.

It is represented that NHA-Provident Fund Association (TIN:) has been registered as a non-stock corporation with the Securities and Exchange Commission (Company Registration No.); that its primary purposes are to promote the economic welfare and well-being of its members and their families thru mutual aid and assistance, to raise the level of consciousness of its members on the values of thrift cooperation, active participation, help and friendly relations among each other, and lastly, to pool and maximize the utilization of corporate and member's investments thru a responsive organization and sound operations; that members of the NHA-Provident Fund Association shall contribute every month a sum equal to three percent (3%)[1] of basic salary as their personal contribution to the NHA-Provident Fund Association, or at such other rate of contribution as the Board of Trustees may approve at some future time, subject to the ratification of the majority of the members at a regular or special general assembly meeting or through referendum; and that the NHA-Provident Fund Association shall extend to its qualified

[1] Par. 2, Sec. 1 of Art. IV of the Amended By-Laws further states that "(T)he three percent (3%) personal contribution will not preclude any additional voluntary contribution which a member may wish to be credited to his/her personal contribution…"

members loans[2] and grant of appropriate benefits in case of cessation from the National Housing Authority, death and other extreme necessity arising out of emergencies[3].

In reply thereto, please be informed that Section 60 (B) of the NIRC of 1997, as amended provides:

> "*Sec. 60 (B). Exception. — The tax imposed by Title II shall not apply to employees' trust which forms part of a pension, stock bonus, or profit-sharing plan of an employer for the benefit of some or all of his employees (1) if contributions are made to the trust by such employer, or employees, or both for the purpose of distributing to such employees the earnings and principal of the fund accumulated by the trust in accordance with such plan, and (2) if under the trust instrument it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees under the trust, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, purposes other than for the exclusive benefit of his employees...*"

The above-cited provision lays down the following requirements in order that the earnings of a retirement fund may be exempt from income tax, to wit: 1) the contributions are made to the trust by the employer, or employees, or both; 2) such contributions are made for the purpose of distributing to such employees the earnings and principal of the fund accumulated by the trust in accordance with such plan; and 3) under the trust instrument it is impossible (in the taxable year and at any time thereafter prior to the satisfaction of all liabilities with respect to employees under the trust) for any part of the corpus or income to be used for, or diverted to, purposes other than for the exclusive benefit of the employees.

Considering that the above conditions are met by NHA-Provident Fund Association, its earnings from bank deposits, yield, or any monetary benefit from deposit substitutes, trust funds and similar arrangements, including those from the government securities issued by the Bureau of Treasury, remain exempt from income tax pursuant to Section 60 (B) of the NIRC of 1997, as amended and, consequently, from withholding tax. It must be emphasized, however, that in its investment activities, no part of the corpus or income of the Fund shall be used for or diverted to purposes other than for the exclusive benefit of the member-employees/officials or their beneficiaries. (BIR Ruling No. 076-2012 dated February 15, 2012)

Revenue Memorandum Circular No. 39-2014 clarifies that as an exception to the above exception, Section 60 (B) of the NIRC of 1997, as amended subjects to income tax, in the year in which so distributed, any amount actually distributed to any employee or distributee to the extent that it exceeds the amount contributed by such employee or distributee.

Prescinding from the foregoing, the entire amounts of benefits paid by a pension, stock bonus or profit sharing plan of an employer for the benefit of employees are taxable on the part of the employees in the year so distributed. This tax treatment, however, does not apply to payouts

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[2] Art. III, Sec. 1 of the Amended By-Laws
[3] Art. I, Sec. 2. b. of the Amended By-Laws

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representing a return of an employee's personal contributions to the fund and to retirement benefits under Section 32 (B)(6)(a) of the NIRC of 1997, 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,

CAESAR R. DULAY
Commissioner of Internal Revenue
034112

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