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

Certificate of Tax Exemption No:
NSH-086-2022
MAR 01 2022

NATIONAL HOUSING AUTHORITY
NHA Building, Elliptical Road,
Quezon City

Attention : **Marcelino P. Escalada, Jr.**
General Manager

Gentlemen:

This refers to your request for legal opinion on the taxability of the conveyance of the five-hectare portion of the real properties owned and registered in the name of the **National Housing Authority (NHA)**, consisting of a three (3)-hectare portion of erstwhile Transfer Certificate of Title (TCT) No. (now TCT Nos. and) and an additional two (2) hectares from its adjoining properties covered by TCT Nos. , , , and of the Registry of Deeds for Manila (the "**Vitas Properties**"), in favor of **R-II Builders, Inc.**

Documents submitted show that on March 19, 1993, a Joint Venture Agreement (JVA) was made and executed by and between the NHA and R-II Builders, Inc. whereby the latter undertook to convert the Smokey Mountain dumpsite into a habitable housing project by developing and constructing a low-cost medium rise housing complex and industrial/commercial site which shall be known as the Smokey Mountain Development and Reclamation Project (SMDRP). Pursuant to said JVA, R-II Builders, Inc. shall, among others, construct 3,500 medium rise low-cost permanent housing units complete with basic utilities and amenities.

Sometime in July 2002, the National Government effectively terminated the appointment of R-II Builders, Inc. as the developer of SMDRP; that due to the unilateral termination by NHA of R-II Builders, Inc.'s designation as developer of SMDRP, R-II Builders, Inc. informed the NHA of its intent to contest the said termination and block the proposed new bidding on the remaining and future works of the project, in the event NHA failed to fully compensate R-II Builders, Inc. for all its actual work accomplishments, interest costs incurred, reasonable rate of return, and for the unilateral termination of all their agreements.

To allow the national government to proceed with the new public bidding on the additional works without any legal objection from the developer, a Memorandum of Agreement (MOA) was executed on August 27, 2003, by and between NHA and R-II Builders, Inc. wherein NHA acknowledged, among others, its indebtedness to R-II Builders, Inc. for the actual works the latter had performed under the SMDRP, including interest and reasonable rate of return.

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R-II Builders, Inc.'s repeated demands, verbal and written, for NHA to settle its obligations under the MOA proved futile; thus, on September 10, 2008, R-II Builders, Inc. filed a Complaint against NHA for "*SPECIFIC PERFORMANCE AND DAMAGES (with prayer for a writ of preliminary attachment)*" before the Regional Trial Court (RTC) of Quezon City, which case was docketed as Civil Case No. Q-08-63416 entitled "*R-II Builders, Inc. v. National Housing Authority (NHA);*"

On December 2, 2011, the RTC of Quezon City Branch 76, rendered a Decision in favor of R-II Builders, Inc. and against NHA, the dispositive portion of which reads, as follows:

> *"WHEREFORE, premises considered, judgment is rendered in favor of plaintiff R-II Builders, Inc. and against defendant National Housing Authority, as follows:*
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> 1. *Ordering defendant National Housing Authority to pay R-II Builders, Inc. the sum of P859,779,259.38, plus legal interest until fully paid;*
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> 2. *Ordering defendant National Housing Authority to convey ownership to plaintiff R-II Builders, Inc. of the five-hectare portion of Vitas Property, which consists of a three-hectare portion of Transfer Certificate of Title No. 216100 of the Registry of Deeds for Manila, and additional two (2) hectares to be taken from the same and the adjoining properties, as described in the Survey Plan attached to the letter dated July 29, 2004 of NHA General Manager Edgardo Pamintuan;*
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> 3. *Ordering defendant National Housing Authority to pay plaintiff the sum of P44,166,397.81 as attorney's fees and other litigation expenses, plus legal interest until fully paid;*
>
> *and dismissing defendant National Housing Authority's cumpulsory counterclaims.*
>
> *The Court also rules to deny any relief in favor of Home Guaranty Corporation on its Answer-in-Intervention due to the latter's non-payment of docket fees and, in any event, for lack of legal standing to participate in the instant case.*
>
> *SO ORDERED."*

The afore-quoted Decision was appealed before the Court of Appeals (CA). The CA, in its Order dated February 7, 2018, has compelled the parties to undergo mandatory conciliation proceedings before its Philippine Mediation Center Unit (PMCU), with the end in view of concluding a fair and equitable and more expeditious resolution of the parties' pending dispute.

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On November 21, 2018, the NHA and R-II Builders, Inc. entered into a Compromise Agreement and have agreed to the following stipulations and covenants, among others, as follows:

UNDERTAKINGS AND OBLIGATIONS OF NHA

1. PAYMENT OF NET MONETARY AWARD. – As and by way of full settlement of the monetary award, inclusive of accrued legal interest, due from NHA in favor of R-II, as set forth in the Decision dated 2 December 2011 in Civil Case No. Q-08-64316, NHA shall pay R-II the sum of PESOS:

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1.1 Of the said reduced amount of F NHA shall pay R-II the initial amount of PESOS (sic) in CASH within six (6) months from execution of this Compromise Agreement, Provided, that the parties may further agree to the payment of the same thru *dacion en pago* of properties located at Vitas, Tondo, Manila.

1.2 The remaining balance of shall, thereafter, be paid by NHA to R-II in cash and by way of *dacion en pago* of the following real properties, whose respective fair market values shall be determined by a duly-accredited appraiser to be chosen by NHA in accordance with the pertinent procurement laws, rules and regulations, to wit:

DESCRIPTION	AREA
Lot 2	22,822 square meters
Lot 5 – 1	5,275 square meters

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UNDERTAKINGS AND OBLIGATIONS OF R-II

4. REDUCTION IN AMOUNT OF MONETARY CLAIMS.- In consideration for the expeditious settlement and/or satisfaction of the judgement award in its favor in Civil Case No. Q-08-63416, R-II shall reduce its total outstanding monetary claim against NHA in that case from PESOS:

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4.1 R-II shall forever renounce, release and discharge NHA from any and all monetary obligations and liabilities for any amount in excess

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of P in connection with R-II's particular claims in Civil Case No. Q-08-63416.

5. ACCEPTANCE OF DACION EN PAGO.- R-II shall receive and accept, as by way of partial payment for NHA's outstanding monetary obligation to R-II in Civil Case No. Q-08-63416, any or all of the properties enumerated in paragraph 1.2 above, and, pursuant thereto, shall execute the appropriate deed or legal document to effect and confirm such *dacion en pago* in favor of R-II.

5.1 Upon actual execution of the appropriate deed or legal document to effect and confirm such *dacion en pago*, R-II shall forever renounce, release and discharge NHA for any liability for the portion of the latter's monetary obligation in Civil Case No. Q-08-63416, which corresponds to the value of the property actually transferred in its favor.

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On September 8, 2021, a Deed of Confirmation of Conveyance of Real Properties in Payment of Debt (Dacion en Pago) was made and executed by and between NHA and R-II Builders, Inc. whereby, as partial payment of NHA's outstanding obligation to R-II Builders, Inc., NHA agreed to convey, as it did, in fact, convey to R-II Builders, Inc. the 5-hectare portion of the 17-hectare Vitas Property.

The NHA is now requesting for legal opinion on the taxability of the conveyance of the subject property, owned and registered in the name of NHA, in favor of R-II Builders, Inc.

In reply, please be informed that under the foregoing circumstances, the Deed of Confirmation of Conveyance of Real Properties in Payment of Debt *(Dacion en Pago)* or the transfer via *dacion en pago* was actually made in payment of the outstanding liabilities of NHA to R-II Builders, Inc. for the expenses/costs and/or services rendered by the latter in the conversion of the Smokey Mountain dumpsite into habitable housing project.

Relative to the above, Section 20 of Republic Act (RA) No. 7279, as amended by RA No. 10884 (Balanced Housing Development Program Amendments) dated July 17, 2016, provides, to wit:

"Sec. 20. Incentives for Private Sector Participating in Socialized Housing. — To encourage greater private sector participation in socialized housing and further reduce the cost of housing units for the benefit of the underprivileged and homeless, the following incentives shall be extended to the private sector:

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"(d) Exemption from the payment of the following:

(1) Project-related income taxes;
(2) Capital Gains Tax on raw lands used for the project;

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(3) Value-added tax for the project contractor concerned[1];"

Section 3 (r) of R.A. 7279 defines "socialized housing" as follows:

> "(r) "Socialized housing" refers to **housing programs and projects** covering houses and lots or homelots only undertaken by the Government or the private sector for the underprivileged and homeless citizens which shall include **sites and services development**, long-term financing, liberalized terms on interest payments, and such other benefits in accordance with the provisions of this Act;"

Based on the foregoing, housing projects covering houses and lots or homelots only, including sites development for socialized housing projects, intended for the underprivileged and homeless citizens undertaken by the Government or the public sector, are entitled to tax exemption on revenues directly derived therefrom.

Considering that R-II Builders, Inc. is a project contractor whose services have been engaged by NHA to undertake the development of SMDRP for the benefit of the squatter families dwelling on the site, the income directly realized by R-II Builders, Inc. from the aforesaid project, in so far as the construction of the socialized housing component (house and lots) is concerned, shall be exempt from project-related income taxes and VAT under RA No. 7279.

Corollary thereto, since the transfer or conveyance of the subject properties partakes the nature of payment of outstanding liabilities for the project cost, land development, housing construction and reclamation of the Project, the value of the property corresponding to the payment for the construction of the socialized housing component is not subject to capital gains tax/creditable withholding tax and documentary stamp tax pursuant to Sections 19 and 20 of RA No. 7279.

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 as null and void

CAESAR R. DULAY
Commissioner of Internal Revenue

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[1] The VAT exemption is still applicable when the contract was entered into between NHA and R-II Builders, Inc. It was repealed under RA No. 10963 or the TRAIN Law effective January 1, 2018.