

[BIR REVENUE REGULATIONS NO. 13-2011, July 25, 2011]

IMPLEMENTING THE TAX PROVISIONS OF REPUBLIC ACT NO. 9856 OTHERWISE KNOWN AS "THE REAL ESTATE INVESTMENT TRUST ACT OF 2009"

SECTION 1. Scope. - Pursuant to the provisions of Sections 244 and 245 of the National Internal Revenue Code (NIRC) of 1997, as amended, in relation to Section 22 of Republic Act No. 9856 (Act) otherwise known as the "Real Estate Investment Trust Act of 2009," these Revenue Regulations are hereby promulgated to implement the tax provisions of the Act.

SECTION 2. Purpose. These Regulations shall supplement the Implementing Rules and Regulations, as revised, promulgated by the Securities and Exchange Commission (SEC) in consultation with the Bureau of Internal Revenue (BIR) and the Department of Finance (DOF). Specifically, these Regulations shall prescribe guidelines and conditions for the registration of Real Estate Investment Trusts (REITs), the application of the tax incentives granted to REITs, the availment of dividend tax exemption by an Overseas Filipino Investor, and the withdrawal of tax incentives granted under the Act.

SECTION 3. Definition of Terms. - For purposes of these Regulations, the term:

(a) "Act" means Republic Act No. 9856 otherwise known as the "Act Providing the Legal Framework for Real Estate Investment Trust".

(b) "BIR" means the Bureau of Internal Revenue.

(c) "CAR" refers to the Certificate Authorizing Registration issued by the BIR to effect the transfer of ownership over real property.

(d) "Commission" or "SEC" means the Securities and Exchange Commission of the Philippines.

(e) "Constitutive Documents" means the articles of incorporation and by-laws of a REIT.

(f) "Corporation Code" refers to Batas Pambansa Bilang 68, otherwise known as the Corporation Code of the Philippines.

(g) "Distributable Income" means net income earned for the taxable year as adjusted for unrealized gains and losses/expenses and impairment losses and other items in accordance with internationally accepted accounting standards. Distributable income excludes proceeds from the

sale of the REIT's assets that are re-invested in the REIT within one (1) year from the date of the sale.

(h) "DST" means Documentary Stamp Tax.

(i) "Exchange" means any entity registered with the Commission as a stock exchange pursuant to the Securities Regulation Code.

(j) "Income-generating Real Estate" means real property which is held for the purpose of generating a regular stream of income such as rentals, toll fees, user's fees and the like, as may be further defined and identified by the SEC.

(k) "IRR" refers to the implementing rules and regulations, as revised, promulgated by the SEC to implement the provisions of this Act.

(l) "Investible Funds" refer to funds of the REIT that can be placed in investment vehicles other than income-generating real estate such as real estate-related assets, managed funds, government securities, and cash and cash equivalents.

(m) "Investor" means the owner of investor securities or investor shares.

(n) "Investor Securities" or "Investor Shares" mean shares of stock issued by a REIT or derivatives thereof.

(o) "LTRAD 3" means the Large Taxpayers Regular Audit Division 3 of the BIR in charge of the audit of the real estate industry.

(p) "NIRC" or "Code" means the National Internal Revenue Code of 1997, as amended.

(q) "Overseas Filipino Investor" refers to an individual citizen of the Philippines who is working abroad, including one who has retained or reacquired his Philippine citizenship under Republic Act No. 9225, otherwise known as the "Citizenship Retention and Re-acquisition Act of 2003."

(r) "Principal Stockholder" means a stockholder who is, directly or indirectly, the beneficial owner of more than ten percent (10%) of any class of investor Securities of the REIT combined.

(s) "Public Company" means a company listed with the Exchange which has, upon and after listing, at least one thousand (1,000) public shareholders each owning at least fifty (50) shares of any class and who in the aggregate own at least forty percent (40%) of the outstanding capital stock of the REIT at the initial year; provided, that the minimum ownership shall be increased to sixty seven percent (67%) within three (3) years from its listing.

(t) "Public Shareholder" means a shareholder of a REIT other than the

following persons (non-public shareholders):

- i. The sponsor/promoter of the REIT;
- ii. A director, principal officer or principal shareholder of the sponsor/promoter of the REIT;
- iii. A director, principal officer or principal shareholder of the REIT
- iv. An associate of a director, principal officer or principal shareholder of the REIT or its sponsor/promoter;
- v. A related corporation to the REIT or its sponsor/promoter; and
- vi. Any person who holds legal title to the shares of stock of the REIT for the benefit of another for the purpose of circumventing the provisions of the Act.

For purposes of sub-paragraph vi herein, unless proven otherwise, a person is presumed to hold legal title to the shares of stock of the REIT for the benefit of another for the purpose of circumventing the provisions of the Act if at least two (2) of the following facts exist: (1) if he does not have the financial capacity at the time of the acquisition to buy or otherwise acquire the shares appearing in his name; (2) if he executes a proxy or other instrument authorizing that person to represent and vote the shares; (3) if there is any document indicating that he holds the shares as trustee for the benefit of that person; (4) if he delivers any cash, stock or property dividends pertaining to the shares to that person; (5) if he assigns his entitlement to any rights offering relating to the shares to that person; (6) if he tenders the shares in response to any tender offer made by that person; and (7) if he sells the shares to that person in any private sale or placement at a discount of at least ten percent (10%) off the closing market price of the shares on the day the . private placement or sale is made.

(u) "Real Estate Investment Trust" or "REIT" is a stock corporation established in accordance with the Corporation Code of the Philippines and the rules and regulations promulgated by SEC principally for the purpose of owning income-generating real estate assets. Except as otherwise provided herein, a corporation becomes a REIT and qualified to avail of the incentives and privileges of the Act when its REIT Plan is rendered effective by the SEC and its listing as a REIT is approved by the Exchange. For purposes of clarity, a REIT, although designated as a "trust", does not have the same technical meaning as "trust" under existing laws and regulations but is used herein for the sole purpose of adopting the internationally accepted description of the company in accordance with global best practices.

(v) "Real Property" shall have the same definition as "Immovable Property" under Article 415 of the Civil Code of the Philippines. Real estate, when used in these Regulations, shall have the same meaning as

real property.

(w) "REIT Plan" refers to the plan, including its amendments, of the REIT registered with the Commission.

(x) "Taxable Net Income" means the pertinent items of gross income specified in Section 32 of the NIRC less all allowable deductions enumerated in Section 34 of the same Code (itemized or optional standard deductions) and the dividends distributed by a REIT out of its distributable income as of the end of the taxable year as: (a) dividends to owners of the common shares; and (b) dividends to owners of the preferred shares pursuant to their rights and limitations specified in the articles of incorporation of the REIT.

(y) "Taxpayers engaged in the real estate business" refers collectively to real estate dealers, real estate developers, and/or real estate lessors. Conversely, the term "taxpayers not engaged in the real estate business" refers to persons other than real estate dealers, real estate developers and/or real estate lessors. A taxpayer whose primary purpose is to engage in the real state business, or whose Articles of Incorporation states that its primary purpose is to engage in the real estate business shall be deemed to be engaged in the real estate business for purposes of these Regulations.

(z) "TCL" refers to the Tax Clearance issued by the BIR to effect the transfer of ownership over shares of stock.

(aa) "Unlisted REIT" refers to a duly incorporated REIT that has not listed with the Exchange.

(bb) "VAT" means Value-Added Tax.

SECTION 4. Registration and Classification of REIT. A REIT including its branches, shall register once with LTRAD 3, on or before the commencement of its business, in accordance with the provisions of Chapter II of Title IX of the NIRC and its implementing revenue regulations.

Upon registration, a REIT shall submit, together with other documents that the Commissioner may require, certified true copies of its constitutive documents and the REIT Plan, a list of its shareholders, their Tax Identification Number, number of shares held and percentage of holding.

For tax purposes, a REIT is considered as a taxpayer engaged in the real estate business. Hence, real properties owned by a REIT are considered as ordinary assets.

SECTION 5. Documentary Stamp Tax on the Transfer of Real Property. The transfer of real property to REITs, including the sale or transfer of any and all security interest thereto, shall be subject to fifty percent (50%) of the applicable Documentary Stamp Tax (DST) imposed under Title VII of the NIRC, as amended.

Under the present provisions of Title VII of the NIRC, where the transfer involves

real property, the DST imposed on the document transferring the real property under Section 196 of the NIRC shall be at the reduced rate of Seven Pesos and Fifty centavos (P7.50) for every One Thousand Pesos (Php1,000.00) or fractional part thereof in excess of P1,000.00 of the consideration or value of the real property transferred.

Where the transfer involves shares of stocks representing interest in the real property, the DST imposed on the sale or transfer of shares of stocks under Section 175 of the NIRC shall be at the reduced rate of Thirty Seven and a-half centavos (P0.375) on each Two Hundred pesos (Php200.00), or fractional part thereof, of the par value of such stock. In case the stock transferred is without par value, the amount of the DST prescribed shall be equivalent to Twelve and one half percent (12 ½%) of the DST paid upon original issuance of said stock.

On the other hand, the DST on the assignment of mortgage or pledge, unless exempt under Section 199 (f) of the NIRC, shall be based on the outstanding balance of the original loan at the time of the transfer or arraignment at the following rate:

- (a) When the amount secured does not exceed Five thousand pesos (P5 000.00), ten pesos (P10.00)
- (b) On each Five thousand pesos (P5,000.00), or fractional part thereof in excess of Five Thousand Pesos (P5.000.00), an additional tax of five pesos (P5.00).

In the event the sale or transfer of real property to REITs shall occur prior to its listing, the REIT, in addition to all other presently existing requirements for the issuance of a CAR, shall (a) execute an undertaking that it shall list within two (2) years from the date of its initial availment of the incentive, and (b) place, for the benefit of the Bureau, in escrow the fifty percent (50%) DST given herein as an incentive in an Authorized Agent Bank acceptable to the Bureau. The amount held in escrow shall be released to the REIT only upon submission of proof of listing as identified under Section 8(3) of these Regulations within the two (2) year period required herein, otherwise, it shall be released in favor of the government, in accordance with provisions of Section 16 of these Revenue Regulations.

For purposes of the above paragraph, the "date of the initial availment of the incentive" is the date of the execution of the transfer documents.

The fifty percent (50%) of the applicable DST given as incentive shall nevertheless be due and demandable together with the applicable surcharge, penalties, and interest thereon reckoned from the date such taxes should have been paid upon the occurrence of any of the following events, subject to the curing period specified under Section 11 hereof:

- i. Failure to list with an Exchange within two (2) years from the date of its initial availment of this incentive;
- ii. Failure to maintain its status as a Public Company;
- iii. Failure to maintain the listed status of the investor securities on the Exchange and the registration of the investor securities by the Commission; and/or