

[BIR REVENUE REGULATIONS NO. 6-2004, March 31, 2004]

IMPLEMENTING THE TAX EXEMPTIONS AND PRIVILEGES GRANTED UNDER REPUBLIC ACT NO. 9182, OTHERWISE KNOWN AS "THE SPECIAL PURPOSE VEHICLE (SPV) ACT OF 2002"

**Chapter 1
General Provisions**

SECTION 1. Scope - Pursuant to Section 244 of the National Internal Revenue Code (NIRC) of 1997, in relation to Section 22 of the Act, these Regulations are hereby promulgated to prescribe the guidelines and procedures for availing the tax exemptions and privileges granted under the Act.

SECTION 2. Declaration of Policy - These regulations are promulgated consistent with the declared policy of the State:

- a. to develop and maintain a sound financial sector of the country;
- b. to address the non-performing asset problems of the financial sector;
- c. to encourage private sector investments in non-performing assets;
- d. to eliminate existing barriers in the acquisition of non-performing assets;
- e. to help in the rehabilitation of distressed businesses with the end in view of contributing to economic value added; and
- f. to improve the liquidity of the financial system which can be harnessed to propel economic growth.

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

- a. "**Act**" shall refer to Republic Act No. 9182, otherwise known as "The Special Purpose Vehicle Act of 2002"
- b. "**Appropriate Regulatory Authority**" refers to the agency/authority having jurisdiction over the Financial Institution (FI's) operations, which shall be the following:

- 1) *Bangko Sentral ng Pilipinas (BSP)* - in the case of banks, which include Land Bank of the Philippines (LBP) and Development Bank of the Philippines (DBP), and trust and quasi-banking functions of financing

companies and investment houses licensed by the BSP;

2) *Department of Finance (DOF)* - in the case of the Philippine Deposit Insurance Corporation (PDIC) and Government-owned-or-controlled-corporations (GOCCs), in consultation with other agencies that have primary jurisdiction over the said FIs whenever deemed appropriate by the DOF; and

3) *Securities and Exchange Commission (SEC)* - in the case of financing companies and investment houses, except their trust and quasi-banking functions, or any qualified entity not under the DOF or BSP.

c. "**Certificate of Eligibility or COE**" refers to the certificate issued by the Appropriate Regulatory Authority as to the eligibility of the NPL or ROPOA for purposes of availing of tax exemptions and privileges, and which, if applicable, likewise indicates its approval of the transfer of the NPAs from the FI to an SPV/Individual being in the nature of a "true sale", pursuant to the provisions of the Act and its implementing rules and regulations.

d. "**Dation in payment (dacion en pago)**" refers to a payment whereby property, whether real or personal, tangible or intangible, is alienated in favor of the creditor, which could either be an FI or an SPV, in satisfaction of a non-performing loan: Provided, that the term does not include forms of transfer such as judicial or extra-judicial foreclosure and execution of judgment.

e. "**Financial Institution or FI**" shall be limited to the following credit granting institutions:

1) *Bangko Sentral ng Pilipinas (BSP)*;

2) Bank as defined under Republic Act No. 8791, also known as "The General Banking Law"

3) Financing company as defined under Republic Act No. 8556 (also known as "the Financing Company Act of 1998");

4) Investment house as defined in Presidential Decree No. 129 (also known as "the Investment Houses Law");

5) Government financial institutions (GFIs), which shall be limited to the Philippine Deposit Insurance Corporation (PDIC), Land Bank of the Philippines (LBP), and Development Bank of the Philippines (DBP);

6) Government-owned-and-or- controlled corporations (GOCCs), which shall be limited to the National Home Mortgage Finance Corporation (NHMFC), Home Guaranty Corporation (HGC), Home Development Mutual Fund (HDMF), Social Security System (SSS), Government Service Insurance System (GSIS), Trade and Investment Development Corporation (TIDCORP), Small Business Guarantee and Finance Corporation (SBGFC), Technology and Livelihood Resource Center (TLRC),

Livelihood Corporation (LIVECOR), National Development Corporation (NDC), Quedan and Rural Credit Guarantee Corporation (QUEDANCOR), National Housing Authority (NHA), and Armed Forces of the Philippines - Retirement and Separation Benefits System (AFP-RSBS); and

7. Other institutions licensed by the BSP to perform quasi-banking functions: *Provided*, That a "non-bank financial institution performing quasi-banking functions" refers to a financing company, investment house or other institution licensed by the BSP to perform quasi-banking functions;

f. **"Non-Performing Asset or NPA"** consists of Non-Performing Loans (NPLs) of, and Real and other Properties Owned or Acquired (ROPOAs) by, FIs for which a COE was issued by the Appropriate Regulatory Authority.

g. **"Non-Performing Loan or NPL"** refers to loans and receivables, such as mortgage loans, unsecured loans, consumption loans, trade receivables, lease receivables, credit card receivables and all registered and unregistered security and collateral instruments, including, but not limited to, real estate mortgages, chattel mortgages, pledges, and antichresis whose principal and/or interest has remained unpaid for at least one hundred eighty (180) days after they have become past due or any of the events of default under the loan agreement has occurred, as of June 30, 2002, as certified by the Appropriate Regulatory Authority.

h. **"ROPOA"** refers to real and other properties owned or acquired by an FI in settlement of its loans and receivables, including, but not limited to real properties, shares of stock, and chattel formerly constituting collateral for secured loans, by way of dation in payment (*dacion en pago*), judicial or extra-judicial foreclosure, or execution of judgment, as of June 30, 2002; in and to such real and other properties acquired by an FI after June 30, 2002, through the same modes in settlement of a loan or receivable classified as NPL as of June 30, 2002; either case as certified by the Appropriate Regulatory Authority: *Provided*, That, only for the purpose of this definition, a property is deemed acquired on:

- 1) The date of notarization of the "*Deed of Dacion*" in case of dation in payment (*dacion en pago*);
- 2) The date of the entry of judgement in case of judicial foreclosure; or
- 3) The date of notarization of the "Sheriff's Certificate" in case of extra-judicial foreclosure;

Provided, further, That this definition does not include real and other properties owned or acquired by an SPV in settlement of its loans and receivables acquired from an FI or otherwise.

i. **Single Family Residential Unit** - shall refer to a building or structure that will be used for residential purposes.

Chapter II

Special Purpose Vehicle

SECTION 4. Registration Requirements for SPV -

a) **Requirements** - Every SPV shall register once with the appropriate Revenue District Office on or before the commencement of its business, in accordance with the provisions of Chapter II of Title IX of the National Internal Revenue Code (NIRC) of 1997 and its implementing regulations. An SPV maintaining a head office, branch or facility shall register with the Revenue District Offices having jurisdiction over the head office, branch or facility. The term "*facility*" shall include, but shall not be limited to, sales outlets, warehouses or storage places.

b) *Required Documents* - The SPV shall file its application for registration together with the following documents:

1. "Certificate of Registration" as an SPV issued by the SEC;
2. Articles of Incorporation and By-Laws; and
3. Mayor's Permit.

c) *Annual Registration Fee* - An annual registration fee in the amount of Five Hundred pesos (P500.00) for every separate or distinct establishment or place of business, including facility types where sales transactions occur, shall be paid by an SPV upon registration and every year thereafter on or before the last day of January. The registration fee shall be paid to an authorized agent bank (AAB) located within the revenue district, or to the Revenue Collection Officer, or duly authorized Treasurer of the city or municipality where each place of business or branch is registered.

d) *Registration of Each Type of Internal Revenue Tax* - An SPV shall register each type of internal revenue tax for which it is obligated to file a return and pay such taxes in accordance with the pertinent provisions of the NIRC of 1997 and its implementing revenue regulations, and update such registration of any changes in accordance with Subsection (f) hereof: *Provided, That*, unless otherwise exempted under the Act, an SPV shall be subject to all applicable taxes imposed by the NIRC of 1997 such as, but not limited to, income tax, value-added tax (VAT), other percentage taxes, documentary stamp tax (DST) etc., whichever is applicable: *Provided, further*, That an SPV shall be considered a withholding agent, and shall be required to file withholding tax returns and remit taxes withheld, on all income payments that are subject to withholding tax.

e) *Transfer of Registration* - In case a registered SPV decides to transfer its place of business or its head office or branches, it shall be its duty to update its registration status by filing an application for registration information update in the form prescribed therefor.

f) *Other Updates* - A registered SPV shall, whenever applicable, update its registration information with the Revenue District Office where it is registered, specifying therein any change in tax type and other taxpayer details.

g) *Cancellation of Registration* - The registration of an SPV shall be cancelled upon filing with the Revenue District Office where it is registered, an application for cancellation in a form prescribed therefor.

SECTION 5. *Issuance of receipts or sales or commercial invoices* - All SPVs shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, issue duly registered receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: *Provided, however,* That in the case of sales, receipts or transfers in the amount of One Hundred Pesos (P100.00) or more, or regardless of amount, where the sale or transfer is made by an SPV liable to VAT to another person also liable to VAT; or where the receipt is issued to cover payment made as rentals, commissions, compensation or fees, official receipts or sales invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer or client: *Provided, further,* That where the purchaser is a VAT-registered person, in addition to the information herein required, the invoice or receipt shall further show the Taxpayer Identification Number (TIN) of the purchaser.

The original of each receipt shall be issued to the purchaser, customer or client at the time the transaction is effected, who, is engaged in business or in the exercise of profession, shall keep and preserve the same in his place of business for a period of three (3) years from the close of the taxable year in which such invoice or receipt was issued, while the duplicate shall be kept and preserved by the SPV, also in its place of business, for a like period, unless a longer period of preservation is required by the circumstances.

SECTION 6. *Keeping of books of accounts* - All SPVs shall keep a journal and a ledger or their equivalents, in accordance with the provisions of Chapter I of Title IX of the NIRC of 1997, and its implementing revenue regulations: *Provided, however,* That those whose quarterly sales, earnings, receipts or output do not exceed Fifty thousand pesos (P50,000.00) shall keep and use a simplified set of bookkeeping records wherein all transactions and results are shown and from which all taxes due the Government may readily and accurately be ascertained and determined any time of the year: *Provided, further,* That SPVs whose gross sales, earnings, receipts or output exceed One hundred fifty thousand pesos (P150,000.00) in any quarter, shall have their books of accounts audited and examined yearly by independent Certified Public Accountants.

Chapter III

Tax Exemptions and Privileges

SECTION 7. *Tax Exempt Transactions* - (a) Pursuant to Section 15 of Article IV of the Act, only the following transactions shall be covered by the tax exemptions as provided in paragraph (d) hereof:

- 1) Transfer of an NPL by an FI to an SPV;
- 2) Transfer of a ROPOA by an FI to an SPV;
- 3) Dation in payment (*dacion en pago*) of an NPL by a borrower to an FI;