

**BIR REVENUE REGULATIONS
(RR) NO. 13-2011,
AS AMENDED BY RR NO. 3-
2020**

**Implementing the Tax Provisions of
RA No. 9856 Otherwise Known as
“The Real Estate Investment Trust
Act of 2009”**

RR No. 13-2011 prescribes the 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.

RR No. 3-2020 - amends RR No. 13-2011

1. Minimum Public Ownership (MPO) requirement to align with SEC definition
2. Remove escrow requirement for availment of tax incentives
3. Provide VAT exemption for transfer of property to REIT under Section 40(C)(2), NIRC

Registration and Classification

A REIT including its branches, shall register with Large Taxpayers Service (LTRAD 3), on or before the commencement of its business and submit certified true copies the following:

1. constitutive documents
2. the REIT Plan
3. Reinvestment Plan
4. list of its shareholders, their TINs, number of shares held and percentage of holding

REIT Transactions with Tax Implications

1. Transfer of real property to REIT
2. Issuance and transfer of investor securities
3. Taxation of the REIT
4. Taxation of dividends declared by REIT

TAXES ON THE TRANSFER OF REAL PROPERTY TO REIT

Taxes on the Transfer of Real Property to REIT

1. DST – 50% of the applicable RATE imposed under the NIRC

A. Real Property

-P7.50 for every P1,000 of the consideration or value

B. Shares representing interest in real property

-P0.75 on each P200.00 (w/ par value);

-25% of the DST paid (w/out par value)

C. Assignment of Mortgage or Pledge

-P20 if up to 5,000 Pesos. Additional P10 for every P5,000 or a fraction thereof.

2. Income tax / capital gains tax / STT / VAT,

as the case may be

Condition for the availment of reduced DST rate on the transfer of real property to REIT:

If the transfer to REIT occurs prior to listing, the REIT shall execute an Affidavit of Undertaking that it shall list within two (2) years from the execution of transfer document. Failure to list within said period shall subject the transfer to the full DST rate plus applicable interest, surcharge and penalties.

*escrow requirement removed per RR No. 3-2020.

**WHEN IS TRANSFER OF REAL PROPERTY TO REIT EXEMPT FROM TAXES (IT/CGT, VAT, DST)?
ANS. WHEN DONE IN ACCORDANCE WITH SEC. 40(C)(2) OF THE NIRC**

ELEMENTS OF TAX FREE EXCHANGE:

- 1. TRANSFER OF PROPERTY IN EXCHANGE FOR SHARES OF THE REIT**
- 2. NOT MORE THAN 5 TRANSFERORS**
- 3. TRANSFERORS ACQUIRED CONTROL OF THE REIT (AT LEAST 51% OF THE VOTING STOCKS)**

Taxation of the Issuance and Transfer of Investor Securities



(A) DST ON THE ORIGINAL ISSUANCE OF SECURITIES (P2.00 FOR EVERY P200 PAR VALUE)

(B) STT ON ANY SALE, BARTER, EXCHANGE OR OTHER DISPOSITION OF LISTED SECURITIES THROUGH THE EXCHANGE (6/10 OF 1%); EXEMPT, HOWEVER, FROM DST

(C) CGT AND DST ON THE SALE, BARTER, EXCHANGE OR OTHER DISPOSITION OUTSIDE OF THE EXCHANGE;

(D) EXEMPT FROM IPO TAX ON THE INITIAL PUBLIC OFFERING AND SECONDARY OFFERING

Taxation of REITS

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1. Regular income tax on its net taxable income
 - 20% - with net tax income
 - p5,000,000 OR LESS AND TOTAL ASSETS OF P100,000,000 OR LESS
 - 25% - OTHERS
2. VAT on gross sales from disposal / rental of real property
3. Other taxes to which the REIT was not expressly exempted

Income Taxation of REIT

A REIT is taxable at 20%/25% on its taxable net income derived from sources within and without the Philippines...

Provided, that in no case shall a REIT be subject to a minimum corporate income tax.

All income payments subject to the expanded withholding tax received by a REIT shall be subject to the lower creditable withholding tax rate of 1%

Net Taxable Income of REIT

In computing its net taxable income, the REIT is allowed to claim as deduction the dividends actually distributed out of the REIT's distributable income.

*A REIT is required to distribute at least 90% of its distributable income.

*ESCROW requirement removed

Conditions for the availment of the deductibility of dividends:

1. Maintain status as a public company/maintain listed status of the securities on the Exchange/maintain registration of securities by SEC
2. Comply with the Reinvestment Plan as certified by the SEC
3. Submit to LTRAD 3 quarterly a sworn statement containing the list of its shareholders, their TINs, their shareholdings and the percentage of holding
4. Submit a sworn statement that the minimum ownership requirement was maintained at all times
5. Distribute at least 90% of distributable income as dividends

VAT on Gross Sales or Gross Receipts of REITs

A REIT is subject to VAT imposed under Sections 106 and 108 of the NIRC on its gross sales from any disposal of real property, and on its gross receipts from the rental of such real property.

A REIT, however, is not considered as a dealer in securities and shall not be subject to VAT on its sale, exchange or transfer of securities forming part of its real estate-related assets.

TAXATION OF DIVIDENDS PAID BY REITS



Cash or property dividends paid by a REIT shall be subject to a final tax of 10%, unless received by:

- (1) Non-resident alien individual or a non-resident foreign corporation entitled to preferential withholding tax rate OF LESS THAN 10% pursuant to an applicable tax treaty;
- (2) Domestic corporation or resident foreign corporation exempt from dividends tax; or
- (3) Overseas Filipino Investor exempt from the dividends tax for 7 years from the effectivity of the Regulations.

*This has already expired.

OTHER TAXES



A REIT is liable for other taxes to which it is not expressly exempted. The provisions of the NIRC shall apply, to wit:

A) 20% final income tax on interest from any currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements and royalties derived from sources within the Philippines;

B) 15% final income tax on interest income derived from a depository bank under the expanded foreign currency deposit system.

C) Corporate Income Tax and VAT on real estate transactions;

D) DST on transactions not otherwise qualified for DST incentive;

E) All other taxes not otherwise expressly exempted by any law; and

F) A REIT is considered as withholding agent and is required to file withholding tax returns and remit withholding taxes.

THANK
YOU!