

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

REVENUE MEMORANDUM CIRCULAR NO. 58 - 2010

SUBJECT: Circularizing Sections 10, 11, 12, 13, 14, 15, 16, 17 and 18 of Republic Act No. 9856 entitled "An Act Providing the Legal Framework for Real Estate Investment Trust and For Other Purposes"

TO : All Revenue Officials, Employees and Others Concerned

For the information and guidance of all internal revenue officers, employees and others concerned, quoted hereunder are the pertinent provisions on tax matters provided in Sections 10, 11, 12, 13, 14, 15, 16, 17 and 18 of Republic Act No. 9856, providing for the taxation and incentives to Real Estate Investment Trust (REIT) as follows:

"SEC. 10. Income Taxation of REITs. – A REIT shall be subject to income tax under Chapter IV, Title II of the National Internal Revenue Code of 1997, as amended, on its taxable net income as defined in this Act: Provided, That in no case shall a REIT be subject to the minimum corporate income tax, as provided under Section 27(E) and Section 28(A)(2) of the same Code: Provided, further, That for purposes of computing the taxable net income of a REIT, dividends distributed by a REIT from its distributable income after the close of a taxable year and on or before the last day of the fifth (5") month following the close of the taxable year shall be considered as paid on the last day of such taxable year.

A REIT shall be subject to the income tax on its taxable net income as defined in Chapter V, Title II of the National Internal Revenue Code of 1997, as amended, instead of its taxable net income as defined in this Act, upon the occurrence of any of the following events subject to such curing period as may be prescribed in the IRR of this Act:

- i. Failure to maintain its status as a public company as defined in Section 8.1 of this Act;
- ii. 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

- iii. *Failure to distribute at least ninety percent (90%) of its distributable income required under Section 7 of this Act.*

SEC. 11. Creditable Withholding Tax. – *Income payments to a REIT shall be subject to a lower creditable withholding tax of one percent (1%).*

SEC. 12. Transfer of Real Property. – *Any existing, law to the contrary notwithstanding, the sale or transfer of real property to REITs, which includes 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 National Internal Revenue Code of 1997, as amended.*

All applicable registration and annotation fees to be paid, related or incidental to the transfer of assets or the security interest thereto, shall be fifty percent (50%) of the applicable registration and annotation fees.

The incentives granted under this section can be availed of by an unlisted REIT, provided it is listed with an Exchange not later than two (2) years from the date of the initial availment of the incentives.

The fifty percent (50%) of the applicable DST 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 such curing period as may be prescribed in the IRR of this Act:

- i. *Failure to list with an Exchange within the period prescribed in this section;*
- ii. *Failure to maintain its status as a public company as defined in Section 8.1 of this Act;*
- 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*
- iv. *Failure to distribute at least ninety percent (90%) of its distributable income required under Section 7 of this.*

SEC. 13. Issuance and Transfer of Investor Securities. – The following rules shall apply:

- i. *The original Issuance of investor securities shall be subject to DST under Title VII of the National Internal Revenue Code of 1997, as amended;*
- ii. *Any sale, barter, exchange or other disposition of listed investor securities through the Exchange, including block sales or cross sales with prior approval from the Exchange, shall be subject to the stock transaction tax imposed under Section 127(a) of the National Internal Revenue Code of 1997, as amended;*
- iii. *Any sale, barter or exchange or other disposition of listed investor securities through the Exchange, including block sales or cross sales with prior approval from the Exchange, shall be exempt from the DST prescribed under Title VII of the National Internal Revenue Code of 1997, as amended; and*
- iv. *Any initial public offering and secondary offering of investor securities shall be exempt from the tax imposed under Section 127(b) of the National Internal Revenue Code of 1997, as amended.*

SEC. 14. Dividends Paid by REITs. – *Cash or property dividends paid by a REIT shall be subject to a final tax of ten percent (10%), unless: (a) the dividends are received by a nonresident alien individual or a nonresident foreign corporation entitled to claim a preferential withholding tax rate of less than ten percent (10%) pursuant to an applicable tax treaty; or (b) the dividends are received by a domestic corporation or resident foreign corporation, or an overseas Filipino investor in which case, they are exempt from income tax or any withholding tax: Provided, That in the case of overseas Filipino investors, they are exempt from the dividends tax for seven (7) years from the effectivity of the tax regulations implementing this Act.*

SEC. 15. VAT on Gross Sales or Gross Receipts of REITs. – *A REIT shall be subject to value-added tax (VAT) imposed under Title IV of the National Internal Revenue Code of 1997, as amended, on its gross sales from any disposal of real property, and on its gross receipts from the rental of such real property. A REIT shall not be 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."*

SECT. 16. General Application of the National Internal Revenue Code of 1997, as amended. — *Unless otherwise provided under this Act, the internal revenue*

taxes under the National Internal Revenue Code of 1997, as amended, shall apply.

SEC. 17. Delisting of REITs. — *In the event the REIT is delisted from the Exchange, whether voluntarily or involuntarily, for failure to comply with the provisions of this Act or rules of the Exchange, the tax incentives granted under this Act shall be ipso facto revoked and withdrawn as of the date the delisting becomes final and executory and any tax incentives that may have been availed of by the REIT thereafter shall immediately be refunded to the Government and the surcharge and penalty prescribed by Section 19 hereof shall apply. If the delisting is for causes highly prejudicial to the interest of the investing public such as violation of the disclosure and related party provisions of this Act or insolvency of the REIT due to mismanagement or misappropriation, conversion, wastage or dissipation of its corporate assets, the responsible persons shall refund to its investors at the time of final delisting the value of their shares.*

SEC. 18. Revocation of Registration. — *If the Commission finds out that the REIT was established so as to seek the benefits of this Act without a true intention to carry out its provisions and/or the IRR, the Commission shall revoke or cancel the registration of the securities of the REIT. The REIT shall pay the applicable taxes plus interests and surcharges under the National Internal Revenue Code of 1997, as amended.”*

This Act lapsed into law on December 17, 2009 without the signature of the President, in accordance with Article VI, Section 27 (1) of the Constitution. Republic Act No. 9856 was published in a newspaper of general circulation on January 25, 2010.

All revenue officials and employees are enjoined to give this circular as wide a publicity as possible.

(Original Signed)
JOEL L. TAN-TORRES
Commissioner of Internal Revenue