REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

JUN 23 2021

REVENUE REGULATIONS NO. 11-2021

SUBJECT : Implementing the Tax Exemptions and Privileges Granted Under Republic Act No. 11523, Otherwise Known as the "*Financial Institutions Strategic Transfer (FIST) Act*".

TO : All Internal Revenue Officials and Others Concerned

I
GENERAL PROVISIONS

SECTION 1. ***Scope.*** – Pursuant to the provisions of Section 244 of NIRC, as amended, in relation to Section 29 of Republic Act (RA) No. 11523, the following Regulations are hereby promulgated to prescribe the guidelines and procedures for availing of the tax exemptions and privileges granted under the Act.

SECTION 2. ***Definition of terms.*** – For purposes of these Regulations, the following words and phrases shall have the meaning indicated below:

(a) **Appropriate Regulatory Authority** - refers to the agency/authority having jurisdiction over the Financial Institution's (FI's) operations, which shall be the following:

(1) **Department of Finance (DOF)** – in the case of Government-Owned-or-Controlled-Corporations (GOCCs) and Government Financial Institutions (GFIs), other than Land Bank of the Philippines (LBP), Development Bank of the Philippines (DBP), and other GFIs that are under the supervision and examination of BSP, in consultation with other agencies that have primary jurisdiction over the said GFIs whenever deemed appropriate by the DOF;

(2) **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 other institutions licensed by the BSP to perform (i) quasi-banking functions and (ii) credit-granting activities, including but not limited to pawnshops, non-stock savings and loan associations, and non-bank credit card issuers;

(3) **Monetary Board or its designated authority** – in the case of BSPs sale of its non-performing assets;

(4) **Insurance Commission** – in the case of insurance companies; and

(5) **Securities and Exchange Commission (SEC)** — in the case of financing and lending companies, accredited microfinance NGOs, and investment houses, except their trust and quasi-banking functions, or any qualified entity not under the DOF or BSP;

(b) **Approval Certificate** means the Certificate of Permit to Sell or Offer for Sale Securities issued by the SEC in favor of Financial Institutions Strategic Transfer Corporation (FISTC) whose FISTC Plan has been approved and rendered effective,

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thereby authorizing the sale and distribution of Investment Unit Instruments (IUIs) pursuant to the provisions of the Act;

(c) **Approved Plan** means a FISTC Plan for which a Certificate of Permit to Sell or Offer for Sale Securities has been issued by the SEC.

(d) **Certificate of Eligibility or COE** refers to the certificate issued by the Appropriate Regulatory Authority as to the eligibility of the Non-Performing Loans (NPL) or Real and Other Properties Acquired (ROPAs) for purposes of availing the tax exemptions and privileges, pursuant to the provisions of the Act.

(e) **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 a FISTC, or an Individual, in satisfaction of a non-performing loan: *Provided*, That the term does not include other forms of transfer such as judicial or extra-judicial foreclosure and execution of judgment.

(f) **Financial Institutions, or FIs** means credit-granting institutions which shall be limited to the following:

(1) the BSP;

(2) a bank, as defined under RA No. 8791, also known as "The General Banking Law of 2000";

(3) a financing company, as defined under RA No. 8556, also known as "The Financing Company Act of 1998";

(4) an investment house, as defined in Presidential Decree (PD) No. 129, also known as "The Investment Houses Law";

(5) a lending company, as defined under RA No. 9474, also known as "Lending Company Regulation Act of 2007";

(6) Accredited microfinance nongovernment organizations (NGOs), as defined under RA No. 10693, otherwise known as "Microfinance NGOs Act";

(7) An insurance company as defined under Presidential Decree No. 612, also known as the "Insurance Code", as amended;

(8) Government Financial Institutions (GFIs), which for purposes of the Act, refer, but are not limited, to the Philippine Deposit Insurance Corporation (PDIC), Land Bank of the Philippines (LBP), and Development Bank of the Philippines (DBP);

(9) Government-Owned or -Controlled Corporations (GOCCs), which for purposes of the Act, refer, but are not limited to the National Home Mortgage Finance Corporation (NHMFC), Philippine Guarantee Corporation (PGC), Home Development Mutual Fund (HDMF), Social Security System (SSS), Government Service Insurance System (GSIS), Small Business Corporation (SBC) and National Housing Authority (NHA) and,

(10) Other institutions licensed by the BSP to perform (i) quasi-banking functions and (ii) credit-granting activities, including but not limited to, pawnshops, non-stock savings and loan associations, and non-bank credit card issuers.

(g) **Financial Institutions Strategic Transfer Corporation, or FISTC** is a stock corporation organized in accordance with RA No. 11232, or "The Revised Corporation Code of the Philippines"; it shall not be allowed to be incorporated as a one-person corporation; and, if it will acquire a land, at least sixty percent (60%) of its outstanding

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capital stock shall be owned by Philippine national as defined under RA No. 7042, as amended. or the "Foreign Investments Act".

(h) **Non-Performing Assets**, or NPAs consist of the non-performing loans (NPLs) and real and other properties (ROPAs) acquired by FIs.

The provisions of the Act shall be applicable to assets that have become non-performing as of December 31, 2022.

(i) **Non-Performing Loans**, or NPLs, refer to secured or unsecured loans, receivables, and other financial assets of similar nature, including restructured loans, whose principal and/or interest have remained unpaid for at least ninety (90) days after they have become past due or any of the events of default under the loan agreement has occurred.

(j) **Real and Other Properties Acquired**, or ROPAs, refer to real and other properties, acquired by an FI in settlement of loans and receivables. including real properties, shares of stocks, and personal properties which have been acquired by way of dation in payment (*dacion en pago*) or judicial or extra-judicial foreclosure or execution of judgment or enforcement of security interest: *Provided*, That, only for the purpose of this definition, a property is deemed acquired on:

(1) The date of notarization of the "Deed of Dation" in case of dation in payment (*dacion en pago*);

(2) The date of the entry of judgment 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 a FISTC in settlement of its loans and receivables acquired from an FI or otherwise.

(k) **"True Sale"** refers to a sale wherein the selling FI transfers or sells its NPAs to a FISTC, without recourse to cash or property in exchange for the transfer or sale, and without prejudice to the FI and FISTC agreeing on sharing of profits and subject to the following results:

(1) The transferor transfers full legal and beneficial title to and relinquishes effective control over the transferred NPAs; and

(2) The transferred NPAs are legally isolated and put beyond the reach of the transferor and its creditors:

Provided, That the transferring FI shall not have direct or indirect control of the transferee FISTC: Provided, further, That the selling FI does not have legal or beneficial ownership of more than ten percent (10%) of the (a) total number of outstanding shares of stock entitled to vote in the election of directors; and (b) the total number of outstanding shares of stock, whether or not entitled to vote, of the transferee FISTC.

(l) **Single Family Residential Unit** refers to a building or structure that will be used for residential purposes.

(m) **Empty Lot** refers to a residential lot with no improvements or buildings thereon.

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II

REGISTRATION AND TAX COMPLIANCE OF FISTC

SECTION 3. ***Registration and other tax compliance requirements of a FISTC.*** – A FISTC established and organized pursuant to the provisions of this Act shall comply with the registration requirements as set forth in Section 236 of the National Internal Revenue Code (NIRC) of 1997, as amended. Further, the newly registered FISTC shall comply with the provisions of the NIRC of 1997, as amended, and other applicable tax revenues issuances, particularly on the following:

(1) Issuances of registered Sales Invoices or Official Receipts for every sale of goods or services;

(2) Keeping of registered Books of Accounts and other accounting records of business transactions;

(3) Withholding of taxes, if applicable;

(4) Filing of required tax returns; and,

(5) Payment of correct taxes due on time.

Entities created under RA No. 9182, as amended, or "The Special Purpose Vehicle (SPV) Act of 2002", are qualified to avail of the privileges and incentives under the Act provided they comply with the requirements and procedures mandated under the Act and its implementing rules and regulations. For this purpose, all reference to FISTC under this Regulations shall also apply to SPV created and organized under RA 9182, as amended.

III

TAX EXEMPTIONS AND PRIVILEGES

SECTION 4. ***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 (b) hereof:

(1) Transfer of an NPL by an FI to a FISTC;

(2) Transfer of a ROPA by an FI to a FISTC;

(3) Dation in payment (*dacion en pago*) of an NPL by a borrower to an FI;

(4) Dation in payment (*dacion en pago*) of an NPL by a third-party, on behalf of a borrower, to an FI;

(5) Transfer of an NPL by an FI to an individual;

(6) Transfer of a ROPA by an FI to an individual;

(7) Transfer of an NPL by a FISTC to a third-party;

(8) Transfer of a ROPA by a FISTC to a third-party;

(9) Dation in payment (*dacion en pago*) of an NPL by a borrower to a FISTC or an individual;

(10) Dation in payment (*dacion en pago*) of an NPL by a third-party, on behalf of a borrower, to a FISTC or an individual;

(11) Transfer of an NPL by an individual to a third-party; and,

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(12) Transfer of a ROPA by an individual to a third-party.

For purposes of the foregoing, the term "individual" refers only to a natural person; while the term "third-party" refers to any person, natural or juridical, unless specifically excluded in the Act (*e.g.*, an FI which transferred the NPA to the selling FISTC, the parent of the said FI).

(b) The transactions enumerated in paragraph (a) above, subject to the conditions set forth in paragraphs (c) and (d) below, shall be exempt from the following taxes:

(1) Documentary stamp tax (DST) on any document evidencing the transfer or dation in payment as may be imposed under Title VII of the NIRC of 1997, as amended;

(2) Capital gains tax imposed on the transfer of lands and/or other assets treated as capital assets as defined under Section 39(A)(1) of the NIRC of 1997, as amended;

(3) Creditable withholding income taxes imposed on the transfer of land and/or buildings treated as ordinary assets pursuant to Revenue Regulations No. 2-98, as amended, *Provided*, That this shall not include exemption from income tax under Title II of the NIRC of 1997. The transfer by an FI or by a FISTC of its NPA which is treated as its ordinary asset shall continue to be subject to the ordinary corporate income tax or minimum corporate income tax, as the case may be, under pertinent provisions of the NIRC of 1997, as amended. In this manner, the FI shall compute the tax gain or loss as the difference between the amount of consideration received from the FISTC and the cost basis of the related NPA, i.e., the unpaid loan amount of the borrower.

(4) Value-added tax on the transfer of NPAs as may be imposed under Title IV of the NIRC of 1997, as amended, or gross receipts tax under Title V thereof, whichever is applicable pursuant to existing revenue regulations: *Provided*, That in case of a VAT-exemption and pursuant to Section 110(A)(3) of the NIRC of 1997, the following rules shall apply:

(i) if the property being transferred was intended for sale, for conversion into or intended to form part of a finished product for sale, for use as supplies in connection with trade or business, or as supplies in the sale of services, by a VAT-registered person, the input tax which can be directly attributed to the said property shall not be allowed as input tax to the transferor's other VATable activities;

(ii) if the property being transferred is a capital good used in the trade or business of a VAT-registered person, the input tax on the said property shall be allocated as follows: the depreciated book value of the property over its acquisition cost, multiplied by the input tax directly attributed to the said property shall not be allowed as input tax to the transferor's other VATable activities; and

(iii) the amount of the unallowable input taxes as determined in paragraphs (i) and (ii) above, if previously debited to "Input Taxes", shall be charged back to the property under the following adjusting entry:

Dr. Inventory/Supplies/Asset	x x x	
Cr. Input Taxes		x x x

(c) The tax exemptions as provided in paragraph (b) hereof shall apply to the transactions listed in paragraph (a) above only if the NPL/ROPA has been issued with a COE by the Appropriate Regulatory Authority.

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(d) The tax exemptions as provided in paragraph (b) hereof shall apply to the transactions listed in paragraph (a) above only if the following particular requirements, where applicable, are complied, to wit:

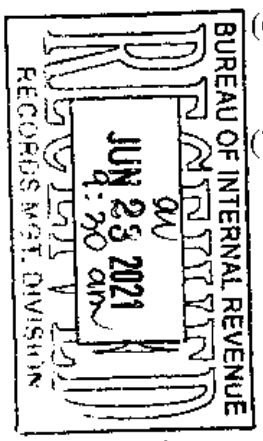
(1) In the case of transactions (a)(1), (a)(2), (a)(5) and (a)(6) above, the transfer must be in the nature of, and approved by the Appropriate Regulatory Authority as, a "true sale", pursuant to the Act and its implementing rules and regulations: *Provided*, That, if the NPL/ROPA is transferred to a FISTC/individual for less than an adequate and full consideration in money's worth, the amount by which the fair market value of the NPL/ROPA exceeded the value of the consideration shall not be considered as a gift under Title III, Chapter 2 of the NIRC of 1997, as amended.

(2) In the case of transactions (a)(1) to (a)(6) above, the transaction must have occurred within a period of not more than two (2) years from the date of effectivity of the Act on February 18, 2021, *i.e.*, from February 18, 2021 to February 18, 2023. Thereafter, the tax exemptions provided in paragraph (b) hereof shall no longer apply.

(3) In the case of transactions (a)(7), (a)(8), (a)(11) and (a)(12) above, the NPL/ROPA must have been acquired by the FISTC or Individual from an FI within a period of not more than two (2) years from the date of effectivity of the Act on February 18, 2021, *i.e.*, from February 18, 2021 to February 18, 2023, in the nature of a "true sale", pursuant to the Act and its implementing rules and regulations; and that the transactions must have occurred within the period of five (5) years from the date of said acquisition. Thereafter, the tax exemptions provided in paragraph (b) hereof shall no longer apply.

(4) In the case of transactions (a)(9) and (a)(10) above, the dation in payment must be in settlement of an NPL that has been acquired by the FISTC or Individual from an FI within a period of not more than two (2) years from the date of effectivity of the Act on February 18, 2021, *i.e.*, from February 18, 2021 to February 18, 2023, in the nature of a "true sale", pursuant to the Act and its implementing rules and regulations; and that the dation in payment must have occurred within the period of five (5) years from the date of said acquisition.

(5) In the case of transactions (a)(2) and (a)(6) above, all applicable taxes on the previous transfer of the ROPA to the FI have been duly paid when the taxes became due or are paid thereafter but subject to appropriate increments and penalties.



(6) In the case of ROPAs acquired by a FISTC from GFIs or GOCCs which are devoted to socialized or low-cost housing, they shall not be converted to other uses.

(7) In the case of dation in payment NPL transactions (a)(3), (a)(4), (a)(9), and (a)(10) above, the tax exemptions provided in paragraph (b) hereof shall apply only to the extent of the value of the property tendered as payment, which is equivalent to the amount of the NPL being paid, inclusive of interests and penalties, if any: *Provided*, That the dation in payment must not be intended to circumvent the intention of the Act which is to benefit solely the borrower and the FI.

The value of the property being transferred as payment is its fair market value as determined in accordance with Section 6(E) of the NIRC of 1997, as amended, whereas the consideration for such transfer shall be the value of the NPL including interests and other charges, if any, as stated in the *Deed of Dation*.

(8) In the case of transactions (a)(5), (a)(6), (a)(11), and (a)(12) above, the transaction shall be limited to either a single family residential unit ROPA or an empty lot ROPA, or to an NPL secured by a real estate mortgage on said residential unit or

empty lot: *Provided*, however. That the tax exemptions provided in paragraph (b) hereof shall apply only to one acquisition of NPA (either NPL or ROPA) by an individual and to the subsequent transfer of the same NPA.

(9) In the case of NPL and ROPA transactions (a)(1), (a)(2), (a)(5), (a)(6), (a)(7), (a)(8), (a)(11), and (a)(12) above, the tax exemptions provided in paragraph (b) hereof shall not apply to the transfer of any property in exchange for such NPL/ROPA, unless the same is exempted under a pertinent provision of an existing law such as paragraph (a) hereof.

(10) In the case of transaction (a)(4) and (a)(10) above, the tax exemptions provided in paragraph (b) hereof shall not extend to any transaction or agreement between the borrower and the third-party as a result of the latter paying the former's NPL on its behalf.

(11) In the case of transactions (a)(7), (a)(8), (a)(11) and (a)(12) above, if the NPL/ROPA involved is transferred for less than an adequate and full consideration in money's worth, the amount by which the fair market value of the NPL/ROPA exceeded the value of the consideration shall not be considered as a gift under Title III, Chapter 2 of the NIRC of 1997, as amended.

(12) In the case of transactions (a)(5) and (a)(6) above, the individual shall submit to the BIR a sworn certification that he has no other prior or pending application for issuance of COE with other FIs.

(e) Illustrations:

Example 1: Transfer of NPL from FI to FISTC

If an FI transfers its NPL with a book value of P100,000.00 to a FISTC in exchange for a land with a fair market value of P50,000.00, plus debt instrument with a face value of P20,000.00, then

(i) the loss of P30,000.00 incurred by the FI shall not be considered as a gift and, therefore, is not subject to donor's tax;

(ii) the debt instrument transferred/issued to the FI shall be subject to DST; and

(iii) the transfer of the land to the FI shall be subject to either capital gains tax or creditable withholding tax, and DST, unless the transfer is exempted under a pertinent provision of an existing law.

Example 2: Transfer of NPA from FISTC to third-party

If a FISTC transfers an NPL with a book value of P100,000.00 within 5 years from the time of its acquisition from an FI to any person other than the same FI, in exchange for a land with a fair market value of P50,000.00, plus debt instrument with a face value of P20,000.00, then

(i) the transfer of the NPL shall not be subject to VAT;

(ii) the insufficiency in the consideration received by the FISTC in the amount of P30,000.00 shall not be considered as a gift;

(iii) the debt instrument issued/transferred to the FISTC shall be subject to DST; and

(iv) the transfer of the land to the FISTC shall be subject to either capital gains tax or creditable withholding tax, and DST, unless the transfer is exempted under a pertinent provision of an existing law.

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Example 3: Transfer of ROPA from FI to FISTC, then to a third-party

An FI acquired on June 30, 2021, a land through extra-judicial foreclosure of a mortgage, which was an NPL as of January 30, 2021. The land is then sold to a FISTC on January 31, 2022, or within two (2) years from the effectivity of the Act. The FISTC builds a house on the land and sells it to a third-party. Hence,

(i) the extra-judicial foreclosure sale to the FI is not covered by the exemption for it is not a dation in payment;

(ii) the transfer of the land (being a ROPA of the FI) to the FISTC is covered by the tax exemption — it was acquired by the FI in settlement of an NPL and it was transferred by FI to FISTC within the 2-year period from the effectivity of the Act; and

(iii) the transfer of the land from the FISTC to the third-party is covered by the tax exemption BUT the transfer of the house thereon is not covered by the tax exemption — it is not a ROPA acquired from an FI.

Example 4: Dation in payment by borrower

If a borrower transfers its "ABC Corp. shares" (classified as capital asset with a FMV of P100,000.00), which cost it P20,000.00 to acquire, to a FISTC in settlement of its NPL of P70,000.00, then:

(i) the transfer is exempt from CGT but only to the extent of P70,000.00, less the expenses and the cost allocated thereto at 7/10 of P20,000.00, and also from the DST to the extent of 7/10 of the par value of the ABC Corp. shares; and

(ii) the transfer is subject to CGT based on the difference of P30,000.00, less the expenses and the cost allocated thereto at 3/10 of P20,000.00, and to the DST based on 3/10 of the par value of the ABC Corp. shares.

On the other hand, if a borrower transfers its truck used in business (with a book value of P90,000.00) to a FISTC in settlement of an NPL of P100,000.00, then:

(i) the transfer is exempt from VAT, subject to the provisions of Sec. 110(A)(3) of the NIRC of 1997; and

(ii) the borrower is liable for income tax on the gain of P10,000.00.

Example 5: Dation in payment by third-party

If a third-party, in behalf of the borrower, transfers its land (classified as capital asset with a FMV of P100,000.00) to an FI in settlement of an NPL of P70,000.00, without any intention of claiming reimbursement from the said borrower, then:

(i) the transfer is exempt from CGT and DST, but only to the extent of P70,000.00;

(ii) the transfer is subject to CGT and DST on the difference of P30,000.00; and

(iii) the third-party is liable for donor's tax by paying the borrower's NPL of P70,000.00.

On the other hand, if a third-party, in behalf of the borrower transfers its VATable land (with a book value of P70,000.00 and a FMV of P120,000.00) to an FI in settlement of an NPL of P100,000.00 because the said borrower gave P80,000.00 to the said third-party, then:

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(i) the transfer is exempt from VAT subject to the provisions of Sec. 110(A)(3) of the NIRC of 1997;

(ii) the transfer is exempt from creditable withholding income tax and DST;

(iii) the third-party is liable for income tax on its gain of P10,000.00; and

(iv) the third-party is liable for donor's tax on the transfer for insufficient consideration where the insufficiency in the consideration amounts to P40,000.00 (P120,000.00 – P80,000.00) unless it is shown that the transfer is at arm's length.

SECTION 5. ***Addditional tax exemptions for a FISTC.*** — Pursuant to Section 16 of the Act, to encourage the infusion of capital and financial assistance by the FISTC for the purpose of rehabilitating the financial consumer's business, the following additional tax exemptions and privileges shall be enjoyed:

a) The FISTC shall be exempt from income tax on net interest income arising from new loans in excess of existing loans, which are extended to a borrower with NPL that has been acquired by the said FISTC from an FI within a period of not more than two (2) years from the date of effectivity of the Act on February 18, 2021, *i.e.*, from February 18, 2021 to February 18, 2023 and which are solely for the purpose of rehabilitating the borrower' business.

The term "net interest income" shall mean gross interest income less allowable deductions limited to those costs attributable to the consummation of the new loans attributable thereto; hence, the said allowable deductions shall no longer be allowed as a deduction from the FISTC's other taxable gross income.

b) Any document evidencing the new loans mentioned in paragraph (a) above shall be exempt from DST.

c) Any document evidencing a FISTC's capital infusion to the business of the borrower with an NPL that has been acquired by the said FISTC from an FI within a period of not more than two (2) years from the date of effectivity of the Act on February 18, 2021, *i.e.*, from February 18, 2021 to February 18, 2023 shall be exempt from DST.

Provided, That the above-mentioned tax exemptions shall apply only for a period of not more than five (5) years from the date of acquisition of the borrower's NPL by the said FISTC.

Illustration of the "net interest income"

FISTC acquires NPL with a principal amount of P100,000.00, then lends P200,000.00 to the borrower, making a total exposure of P300,000.00, and sets the interest at 20% per annum. Assuming its total annual gross income is P100,000.00 (this is different from the principal amount of P100,000.00), and its total annual allowable deductions is P80,000.00, then:

(i) The P200,000.00 new loan is exempt from DST;

(ii) The FISTC shall be exempt from income tax on the "net interest income" computed as follows:

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Gross Income (P300,000.00 x 20% x P200,000.00/P300,000.00)	P 40,000.00
Less: Allowable Deductions (P80,000.00 x P40,000.00/P100,000.00)	32,000.00
Net Interest Income (Income tax exempt)	P8,000.00

(iii) The FISTC's taxable gross income shall then be computed as follows:

Gross Income (P100,000.00 less P40,000.00)	P 60,000.00
Less: Allowable Deductions (P80,000.00 less P32,000.00)	48,000.00
Net taxable income	P12,000.00

SECTION 6. ***Privileges of a FI.*** - Pursuant to Section 17 of the Act, any loss that is incurred by an FI as a result of transferring its NPA to a FISTC/Individual within a period of not more than two (2) years from the date of effectivity of the Act on February 18, 2021, *i.e.*, from February 18, 2021 to February 18, 2023, excluding accrued interests and penalties receivable, and which had not been previously offset as deduction from gross income, shall be treated as ordinary loss, and may be carried over as a deduction from its taxable gross income for a period of five (5) consecutive taxable years immediately following the year of the transfer that resulted to such loss: Such NOLCO shall be presented in the FI's Notes to the Financial Statements separately from the NOLCO incurred for other taxable activities. Failure to comply with the reporting requirement will subject the FI to penalties under Section 24 of the Act, as well as other pertinent laws, rules and regulations. *Provided*, That the "tax savings" derived by the FI from such loss carry-over shall not be made available for dividend declaration, but shall be retained as a form of capital build-up: *Provided, further*, That the FI cannot enjoy this privilege if it enters into a merger, consolidation, or combination with another person, unless, as a result of such merger, consolidation or combination, the shareholders of the said FI gains control of at least 75% or more in nominal value of the outstanding issued shares or paid up capital of the surviving/new corporation: *Provided, finally*, That the FI shall continue to be subject to the minimum corporate income tax (MCIT) of two percent (2%)[1] of its gross income as of the end of the taxable year pursuant to Sec. 27 or Sec. 28 of the NIRC of 1997, as amended, whichever is applicable, notwithstanding the above provisions.

For purposes of the foregoing, the term "tax savings" shall mean the excess of the normal income tax due from the FI without the benefit of the loss carry-over under the Act, over and above the normal income tax due after availing the said loss carry-over for a particular taxable year; *Provided*, however, That, in case the FI is liable for an MCIT despite the benefit of the said loss carry-over, the excess of the MCIT over and above the normal income tax due from the FI after availing the said loss carry-over for a particular taxable year shall no longer be considered as a "tax savings" if the same cannot be credited against the normal income tax for any of the three (3) immediately succeeding taxable years: *Provided, further*, That the "tax savings", if there be any, shall be recognized in the books of accounts of the FI and shall appear on its financial statements.

[1] Subject to one percent (1%) MCIT rate for the period July 1, 2020 to June 30, 2023 pursuant to Republic Act (RA) No. 11523 or the CREATE

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Illustrative computations of loss carry-over and "tax savings". — The computation of the loss carry-over and the application of the rules prescribed in the preceding paragraph are illustrated in the following examples:

(a) Sale of NPAs to FISTC in Taxable year 1:

Total NPAs sold	*P100,000.00*
Less: total consideration received	*70,000.00*
Total loss from sale of NPAs	*P30,000.00*
Less: Accrued interests/penalties (capital loss)	*20,000.00*
Loss that may be carried over for 5 years	*P10,000.00*

Illustrative journal entry to record sale of NPAs:

Dr. Cash/Property	P 70,000.00	
Dr. Loss from sale of NPAs	10,000.00	
Dr. Loss on sale of accrued interest penalties	20,000.00	
CR NPLs/ROPAs		P 100,000.00

(b) Taxable year 1 – gross income of P500,000.00; allowable deductions of P495,000.00; and ordinary loss carry-over of P6,000.00:

Gross income		P 500,000.00
Less: Allowable deductions	P 495,000.00	
Ordinary loss carry-over (3-yr limit)	6,000.00	501,000.00
Ordinary loss to be carried over		P 1,000.00
Less: Loss from sale of NPAs (5-yr limit)		10,000.00
Total net loss carry-over		P 11,000.00
Normal income tax before loss		Zero
Normal income tax after loss		Zero
MCIT		P 10,000.00
Income tax due (MCIT)		P 10,000.00[2]
Excess MCIT (P10,000.00 less Zero)		P 10,000.00
Tax savings		None

[2] Subject to two percent (2%) MCIT rate (1% for the period July 1, 2020 to June 30, 2023 pursuant to Republic Act (RA) No. 11523 or the CREATE)

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Illustrative journal entry to record excess MCIT:

Dr. Excess MCIT	P 10,000.00	
CR Income tax payable		P 10,000.00

(c) *Taxable* year 2 — gross income of P300,000.00; and allowable deductions of P295,000.00:

Gross income		P 300,000.00
Less: Allowable deductions	P 295,000.00	
Ordinary loss carry-over (3-yr limit)	1,000.00	296,000.00
Net income before loss from sale of NPAs		P 4,000.00
Less: Loss carry-over from sale of NPAs		10,000.00
Loss from sale of NPAs to be carried over (4-yrs)		P 6,000.00
Normal income tax before loss from sale of NPAs (See Note below)		P 1,000.00
Normal income tax after loss from sale of NPAs		Zero
MCIT		P 6,000.00[3]
Income tax due (MCIT)		P 6,000.00
Excess MCIT (P6,000.00 less Zero)		P 6,000.00
Tax savings (P1,000.00 less Zero)		P 1,000.00

Illustrative journal entry:

Dr. Excess MCIT	P 6,000.00	
Dr. Retained earnings	1,000.00	
Cr. Income tax payable		P 6,000.00
Cr. Reserve for capital build-up – NOLCO/FISTC		1,000.00

To record the excess MCIT, and to set up the tax savings on NOLCO derived from the sale of NPAs, computed as follows: (P4,000.00 x 25%) less Zero

[3] Subject to two percent (2%) MCIT rate (1% for the period July 1, 2020 to June 30, 2023 pursuant to Republic Act (RA) No. 11523 or the CREATE)

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Note: Effective July 1, 2020, corporate income tax rate of 25% or 20%, as may be applicable, pursuant to RA No. 11534 or the CREATE

(d) Taxable year 3 — gross income of P200,000.00; and allowable deductions of P160,000.00:

Gross income		P 200,000.00
Less: Allowable deductions		160,000.00
Net income before loss from sale of NPAs		P 40,000.00
Less: Loss carry-over from sale of NPAs		6,000.00
Net taxable income		P 34,000.00
Normal income tax before loss from sale of NPAs		P 10,000.00
Normal income tax after loss from sale of NPAs		P 8,500.00
Minimum Corporate Income Tax		P 4,000.00[4]
Income tax due		P 8,500.00
Less: Excess MCIT – Year 1	P 10,000.00	
Excess MCIT – Year 2	6,000.00	P 16,000.00
Balance of excess MCIT – Year 2		P 7,500.00
Tax savings (P10,000 less P8,500)		P 1,500.00

Illustrative journal entry:

Dr. Income tax expense	P 8,500.00	
Dr. Retained earnings	1,500.00	
Cr. Excess MCIT		P 8,500.00
Cr. Reserve for capital build-up – NOLCO/FISTC		1,500.00

[4] Subject to two percent (2%) MCIT rate (1% for the period July 1, 2020 to June 30, 2023 pursuant to Republic Act (RA) No. 11523 or the CREATE)

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To record income tax expense (P34,000.00 x 25%): reduction of excess MCIT and to set up the tax savings on NOLCO derived from the sale of NPAs, computed as follows: 10,000 less 8,500 = 1,500.

SECTION 7. ***True sale.*** — All sales or transfers of NPAs from the FIs to a FISTC/Individual which is not in the nature of a "true sale" as provided in the Act and its implementing rules and regulations shall not qualify for any of the tax exemptions granted under the Act.

SECTION 8. ***Investment Unit Instruments or IUIs.*** —

(a) These refer to participation certificates, debt instruments or similar instruments issued by a FISTC and subscribed by Permitted Investors as provided in Section 11 of the Act, pursuant to an Approved Plan: *Provided*, That these shall not include the instruments to be issued by a FISTC to the selling FIs as full or partial settlement of the NPAs transferred to the said FISTC: *Provided, further*, That these shall not form part of the capital stock of the FISTC.

(b) IUIs issued by a FISTC shall not be considered as deposit substitutes and any interest or other monetary benefit derived from IUIs is not subject to the twenty-percent (20%) final income tax under Secs. 24(B)(1), 25(A)(2), 27(D)(1), and 28(A)(7) of the NIRC of 1997, as amended: *Provided, however*, That the IUI and any such income derived from IUIs shall be subject to the normal income tax and/or such other applicable taxes (VAT OR GRT), including but not limited to, documentary stamp tax on debt instruments imposed under the NIRC of 1997, as amended, and its implementing regulations.

IV

PROCEDURAL GUIDELINES

SECTION 9. ***Certificate of Eligibility (COE).*** –

(a) The COE issued by the Appropriate Regulatory Authority serves as sufficient proof of an NPL/ROPA being an NPA within the purview of the Act and its implementing rules and regulations without the need of a prior BIR determination/ruling. If applicable, it also serves as sufficient proof that the sale/transfer from an FI to a FISTC/Individual is in the nature of a "true sale" within the purview of the Act and its implementing rules and regulations without the need of a prior BIR determination/ruling.

In case the COE does not contain a statement that the sale/transfer is in the nature of a "true sale" in accordance with Sections 3(k) and 13 of the Act and its implementing rules and regulations, then, the Sworn Certification by the FIs containing such a statement which they filed when they applied for COE with the Appropriate Regulatory Authority shall be submitted to the BIR as an attachment to the COE.

(b) A COE from the Appropriate Regulatory Authority is required to be presented to the BIR, aside from the other documentary requirements, for every application or request for issuance of eCAR involving the transfer of NPAs. The subject NPAs (NPLs and ROPAs) shall be indicated in the COE, or a separate list of the NPAs be attached to the COE, containing, among others, the following information: the name of the borrower, the name of the FI owning the NPA, the date granted/acquired, manner of acquisition, name of the person from whom the NPA was acquired by the FI, particulars of the NPL/ROPA, and the name of the transferee (if applicable).

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(c) To ensure the authenticity of the COE, the Appropriate Regulatory Authority shall coordinate with and furnish the Commissioner of the BIR an original duplicate copy thereof, in addition to the complete list of NPAs (NPLs and ROPAs) of every FI which may be submitted by the Appropriate Regulatory Authority or the FI itself.

(d) Moreover, while a transfer of NPA from an FI to a FISTC without COE is allowed, it shall not be entitled to fiscal incentives under the Act.

SECTION 10. ***Transfers of real property located in the Philippines.*** **—**

(a) No registration of any document transferring real property covered by the tax exemptions granted under the Act shall be effected by the Register of Deeds unless the Commissioner or his duly authorized representative has issued an electronic Certificate Authorizing Registration (eCAR) pursuant to existing revenue issuances, after such transfer has been reported, and that the BIR is satisfied that the same is qualified for tax exemptions pursuant to these Regulations.

(b) Within thirty (30) days following the issuance of a COE covering the transfer of real property as mentioned in paragraph (a) above, a Capital Gains Tax Return therefor shall be filed by the transferee with the Revenue District Office (RDO) having jurisdiction over the place where the real property being transferred is located. The return shall be accompanied by either the original or certified true copy of the COE and the following documentary requirements:

(i) Sworn Certification by the FIs that the sale/transfer is in the nature of a true sale in accordance with Sections 3(k) and 13 of the Act and its implementing rules and regulations in case of transfer of real property from the FI to a FISTC/Individual (if such statement is not included in the COE);

(ii) in case the transferee is an Individual, a Sworn Certification by said Individual that he or she has no other prior or pending application for issuance of COE with the other FIs;

(iii) taxpayer's identification number (TIN) and certificate of SEC registration (in the case of an FI/FISTC) of both the transferor and transferee;

(iv) notarized Deed of Dation/Transfer;

(v) Original/Transfer Certificate of title (OCT/TCT), Condominium Certificate of Title (CCT), or any other document showing proof of ownership over the real property tendered as payment for the NPL;

(vi) certified true copy of the latest Tax Declaration for land and improvement as of the date of the transaction and/or sworn Declaration of No Improvement by the transferee or Certificate of No Improvement issued by the Assessor;

(vii) the promissory note/s and/or other loan document/s, in case of dation in payment;

(viii) copy of the agreement between the Borrower and the third-party who made the dation in payment on behalf of the former (if applicable); and,

(c) In case of transfer of real property from a FIST/Individual to a third party, the presentation of the certified true copy of the COE may be dispensed with and a mere photocopy of such COE suffices provided that the reading of the barcode or similarly electronically readable markings contained in the COE is already in place and operational in the BIR.

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Upon presentation of the Capital Gains Tax Return, together with the corresponding COE and the documentary requirements as mentioned in the preceding paragraph, the RDO where the property being transferred is located, shall issue the corresponding eCAR for the registration of the real property in favor of the transferee: *Provided*, That, in case the transferor is a FI, the concerned RDO shall see to it that all applicable taxes on the previous transfer to the FI have been duly paid when the taxes became due or are paid thereafter but subject to appropriate increments and penalties.

SECTION 11. ***Transfer of shares of stocks in a domestic corporation.*** —

(a) No sale, exchange, transfer or similar transaction intended to convey ownership of, or title to any share of stock in a domestic corporation, covered by the tax exemptions granted under the Act, shall be registered in the books of the corporation unless the Commissioner or his duly authorized representative has issued an eCAR pursuant to existing revenue issuances, after such transfer has been reported, and that the BIR is satisfied that the same is qualified for tax exemptions pursuant to these Regulations.

(b) Within thirty (30) days following the issuance of a COE covering the sale, transfer or other disposition of shares of stock as mentioned in paragraph (a) above, a Capital Gains Tax Return therefor shall be filed by the transferor with the RDO where the taxpayer is registered. The return shall be accompanied by either the original or certified true copy of the COE and the following documentary requirements:

(i) Sworn Certification by FIs that the sale/transfer is in the nature of a true sale in accordance with Sections 3(k) and 13 of the Act and its implementing rules and regulations in case of transfer of shares of stock from the FI to a FISTC (if such statement is not included in the COE);

(ii) Taxpayer's identification number (TIN) and certificate of SEC registration (in the case of an FI/FISTC) of both the transferor and transferee;

(iii) Notarized Deed of Transfer;

(iv) Certificate of the shares of stock used to pay the NPL;

(v) For listed shares of stocks, certification from Philippine Stock Exchange (PSE) of the price index on the nearest date to the time of the transfer/latest FMV published in the newspaper at the time of the transaction;

(vi) For unlisted shares of stocks, latest Audited Financial Statement of the issuing corporation with a computation of the book value per share, prior to the date of transfer, but not earlier than the immediately preceding taxable year;

(vii) The promissory note/s and/or other loan document/s, in case of dation in payment; and

(viii) Copy of the agreement between the Borrower and the third-party who made the dation in payment on behalf of the former (if applicable).

(c) In case of transfer shares from a FIST to a third party, the presentation of the certified true copy of the COE may be dispensed with and a mere photocopy of such COE suffices provided that the reading of the barcode or similarly electronically readable markings contained in the COE is already in place and operational in the BIR.

(d) Upon presentation of the Capital Gains Tax Return, together with the corresponding COE and the documentary requirements as mentioned in the preceding paragraph, the RDO, shall issue the corresponding eCAR, for the registration of the shares of stocks in favor of the transferee in the books of the corporation: *Provided*, That, in case the

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transferor is an FI, the concerned RDO shall see to it that all applicable taxes on the previous transfer to the FI have been duly paid when the taxes became due or are paid thereafter but subject to appropriate increments and penalties.

SECTION 12. ***Other exempt transactions and tax privileges.*** — A FISTC claiming any of the tax exemptions and privileges under the Act on other transactions shall upon request provide the appropriate COE to the Commissioner of the BIR or his duly authorized representative for purposes of examining any taxpayer and the assessment of the correct amount of tax. This is in addition to such other documentary requirements as stated above.

SECTION 13. ***Reports to be submitted by a FISTC.*** — The FISTC shall, in addition to the existing requirements under the NIRC of 1997, as amended, and its implementing regulations, for purposes of implementing the provisions of the Act, submit to the BIR as attachments to its Annual Income Tax Return (ITR) the following:

(a) List of taxable transactions;

(b) List of tax-exempt transactions; and,

(c) List of partly tax-exempt and partly taxable transactions.

SECTION 14. ***Abuse of tax exemptions and privileges.*** — Any person, natural or juridical, who benefits from the tax exemptions and privileges herein granted, when such person is not entitled thereto, shall - in addition to the penalties and administrative sanctions provided for in Section 24 of the Act - refund to the government double the amount of the tax exemptions and privileges availed of under the Act, plus interest of twelve percent (12%) per year from the date prescribed for its payment until the full payment thereof: *Provided*, That this is without prejudice to the applicable penalties under the NIRC of 1997.

SECTION 15. ***Incorporation clause.*** — All existing rules and regulations, rulings, orders or parts thereof which are not inconsistent with any of the above provisions are hereby adopted and incorporated as part of these regulations.

SECTION 16. ***Repealing clause.*** — All existing rules and regulations or parts thereof, which are inconsistent with the provisions of these regulations, are hereby revoked.

SECTION 17. ***Effectivity.*** — These Revenue Regulations shall take effect after fifteen (15) days following publication in a newspaper of general circulation.

CARLOS G. DOMINGUEZ
Secretary of Finance

JUN 16 2021

Recommending Approval:

CAESAR R. DULAY
Commissioner of Internal Revenue

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