REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Quezon City

JAN 29 2020

REVENUE REGULATIONS NO. 3-2020

SUBJECT : Amending Certain Provisions of Revenue Regulations No. 13-2011, Implementing the Tax Provisions of Republic Act No. 9856, Otherwise Known as "The Real Estate Investment Trust (REIT) Act of 2009".

TO : All Internal Revenue Officers and Others Concerned

SECTION 1. SCOPE. — Pursuant to the provisions of Sections 244 and 245 of the National Internal Revenue Code of 1997, as amended, in relation to Section 22 of Republic Act (RA) No. 9856, otherwise known as the "The Real Estate Investment Trust (REIT) Act of 2009", these Regulations are hereby promulgated to amend certain provisions of Revenue Regulations (RR) No. 13-2011 dated July 25, 2011.

SECTION 2. Section 3 of RR No. 13-2011 is hereby amended and renumbered as follows:

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

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(s) "Public Company" means a company listed with the Exchange and which, upon and after listing, have 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 one-third (1/3) of the outstanding capital stock of the REIT.

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(w) "Reinvestment Plan" refers to a sworn statement, duly received by the Exchange and the Commission, signed by the Sponsor/Promoter and Principal Shareholder of the REIT firmly undertaking the following:

(1) to reinvest (i) any proceeds realized by the Sponsor/Promoter from the sale of REIT shares or other securities issued in exchange for income-generating Real Estate transferred to the REIT and (ii) any money raised by the Sponsor/Promoter from the sale of any of its income-generating Real Estate to the REIT, in any Real Estate, including any redevelopment thereof, and/or Infrastructure

Projects as defined in Republic Act No. 6975, as amended, and its relevant implementing guidelines, in the Philippines.

(2) *Reinvestment shall be made within one (1) year from the date of receipt of proceeds or money by the Sponsor/Promoter.*

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

(y) *"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.*

(z) *"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 estate 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.*

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

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

(cc) *"VAT" means Value-Added Tax."*

SECTION 3. Section 4 of RR No. 13-2011 is hereby amended to read as follows:

"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, Reinvestment Plan, a list of its shareholders, their Tax Identification Number, number of shares held and percentage of holding.

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SECTION 4. Section 5 of RR No. 13-2011 is hereby amended to read as follows:

"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.

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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 Seventy-five centavos (P0.75) 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 twenty-five percent (25%) 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 assignment at the following rate:

(a) When the amount secured does not exceed Five thousand pesos (P5,000.00), Twenty pesos (P20.00).

(b) On each Five thousand pesos (P5,000), or fractional part thereof in excess of Five thousand pesos (P5,000.00), an additional tax of Ten pesos (P10.00).

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 execute an Affidavit of Undertaking that it shall list within two (2) years from the date of its initial availment of the incentive.

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 an 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:

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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 as required under R.A. No. 9856.

SECTION 5. Section 7 of RR No. 13-2011 is hereby amended to read as follows:

"SECTION 7. Transfer of Real Property Pursuant to Section 40 (c) (2) of the NIRC.

(a) Transfers or exchanges of real property for shares of stock in a REIT falling under Section 40 (C) (2) of the NIRC shall have the following tax consequences:

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ii. VAT. The transfer of property to a REIT in exchange for its shares is exempt from VAT as provided under Section 109 (X) of the NIRC.

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SECTION 6. Section 8 of RR No. 13-2011 is hereby amended to read as follows:

"SECTION 8. Guidelines for the Availment of DST Incentive and the Issuance of CAR.

(a) Parties availing of the DST incentive under Section 5 of these Regulations shall, together with the applicable documents as enumerated under Revenue Memorandum Order No. 15-2003, submit the following to the concerned Revenue District Office issuing the CAR/TCL:

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iii. Two certified true copies of the Certificate that REIT is listed with the Exchange (for listed REITs) or an Affidavit of Undertaking that the REIT shall be listed within two (2) years from the date of its initial availment of the incentive (for unlisted REITs); and

iv. Two copies of the Reinvestment Plan duly received by the BIR.

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(e) An unlisted REIT must submit to the concerned RDO the original or certified true copy of the Listing Circular issued by the Exchange, or its equivalent document, within two years from the date of its initial availment of this incentive. Otherwise, the previously reduced fifty percent (50%) of the applicable DST on transfer of the above property shall immediately become due and demandable together with the applicable surcharge, penalties thereon from the date the taxes should have been paid. The imposition of the applicable DST, interest and penalties shall be without prejudice to the administrative, civil and criminal liabilities of the parties under the applicable provisions of the Act and the NIRC."

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SECTION 7. Section 9 of RR No. 13-2011 is hereby amended to read as follows:

"SECTION 9. Taxation of the Issuance and Transfer of Investor Securities. — The following rules shall apply in the issuance and transfer of investor securities:

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(d) Any sale, barter, exchange or other disposition of investor securities outside of the Exchange shall be subject to capital gains tax imposed under Sections 24 (C), 25 (3), 27 (D) (2), 28 (A) (7) (c) and (B) (5) (C) of the NIRC;

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SECTION 8. Section 10 of RR No. 13-2011 is hereby amended to read as follows:

"SECTION 10. Income Taxation of REIT. A REIT shall be taxable on all income derived from sources within and without the Philippines at the applicable income tax rate of 30% as provided under Section 27 (A) of the NIRC on its taxable net income as defined in these Regulations. Provided, that in no

case shall a REIT be subject to a minimum corporate income tax, as provided under Section 27 (E) of the NIRC.

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For purposes of this section, the dividends allowed as deductions during the taxable year shall pertain to dividends actually distributed out of the REITS's distributable income at any time after the close of but not later than the last day of the fifth (5th) month from the close of the taxable year. Any dividends distributed within this prescribed period shall be considered as paid on the last day of REIT's taxable year.

From the year of its listing, at the latest and thereafter, the REIT shall maintain its status as a public company as defined herein, and shall comply with the provisions of its submitted Reinvestment Plan as certified by the Commission under Section 11 (4) of the RR. Otherwise, dividend payment shall not be allowed as a deduction from its taxable income.

It is also required to submit to LTRAD 3 quarterly a sworn statement containing the list of its shareholders, their Tax Identification Number, their shareholdings, and the percentage that their shareholding represents. Prior to any declaration of any dividends, and for said dividends to be deducted from its income for tax purposes, the REIT shall in addition submit a sworn statement that the minimum ownership requirement was maintained at all times."

SECTION 9. Section 11 of RR No. 13-2011 is hereby amended to read as follows:

"SECTION 11. General Conditions for the Availment of Tax Incentives. — In order to qualify for the tax incentives under Sections 5 and 10 of these Regulations, a REIT must:

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2. *For the DST incentive on transfer of real property provided for under Section 6, enlist with an Exchange within two (2) years from date of initial availment of DST incentive and maintain the listed status of the investor securities on the Exchange and the registration of the investor securities by the SEC;*

3. *Distribute at least ninety percent (90%) of its distributable income as required under the Act and its IRR, as revised; and*

4. *Comply with its Reinvestment Plan, as certified by the Commission. The Certification from the Commission that the REIT is compliant with its Reinvestment Plan must be submitted by the REIT as an attachment to its annual income tax return and audited financial statements on or before April 15 (or on the 15th day of the 4th month following the close of the fiscal year).*

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SECTION 10. Section 16 of RR No. 13-2011 is hereby amended and renumbered as follows:

"SECTION 16. Withdrawal of Tax Incentives. - (a) A REIT shall be subject to the applicable taxes, plus interests and surcharges, under the NIRC

upon the occurrence of any of the following events, subject to the rule on curing period where applicable:

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iv. Failure of a REIT to list with an Exchange within the two-year period from date of initial availment of DST incentive;

v. Revocation or cancellation of the registration of the securities of a REIT; and

vi. Failure of a REIT to comply with the Certification requirement under Section 11 (4) of the RR.

(b) The recovery of the applicable deficiency income tax and DST from a REIT shall be subject to the following rules:

i. For deficiency income tax, an assessment shall be issued by LTRAD 3 against a REIT in accordance with Section 228 of the NIRC and its implementing revenue regulations;

ii. The deficiency income tax of a REIT shall be computed based on its gross income as defined under Section 32 of the NIRC less the deductions under Section 34 of the same Code. The dividends distributed shall not be allowed as deduction from the taxable income; and

iii. On the other hand, the deficiency DST equivalent to 50% of the applicable DST, together with the applicable interest, surcharges and penalties, shall immediately become due and demandable, without need of an assessment, reckoned from the date of its initial availment of the DST incentives. For this purpose, a Formal Letter of Demand showing the details of the tax due shall be issued by LTRAD 3 against a REIT and collection of the tax shall be enforced in accordance with Chapter II, Title VIII of the NIRC."

SECTION 11. Section 18 of RR No. 13-2011 is hereby amended to read as follows:

"SECTION 18. Reports/Documents to be Submitted by a REIT. — A REIT shall, in addition to the existing requirements under the NIRC and its implementing regulations, and the requirements contained in the previous paragraphs, submit to LTRAD 3 annually on or before April 15 (or on the 15th day of the 4th month following the close of the fiscal year) the following:

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(g) Written report on the performance of the REIT's funds and properties;

(i) Copy of the Valuation Report prepared by the REIT appointed Property Valuer;

(j) Original/Certified True Copy of the Certification from the Commission that the REIT is compliant with its Reinvestment Plan, duly received by the BIR, as required under Section 11 (4) of the RR.

SECTION 12. REPEALING CLAUSE. — Any rules and regulations, issuances or parts thereof inconsistent with the provisions of these Regulations are hereby repealed, amended or modified accordingly.

SECTION 13. SEPARABILITY CLAUSE. — If any of the provisions of these regulations is subsequently declared unconstitutional, the validity of the remaining provisions hereof shall remain in full force and effect.

SECTION 14. EFFECTIVITY. — These Revenue Regulations shall take effect immediately.

Recommending Approval:

(Original Signed)

CAESAR R. DULAY
Commissioner of Internal Revenue

Approved:

(Original Signed)

CARLOS G. DOMINGUEZ
Secretary of Finance

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