

REVENUE REGULATIONS NO. 11-2021 issued on June 23, 2021 implements the tax exemptions and privileges granted under Republic Act (RA) No. 11523 (Financial Institutions Strategic Transfer [FIST] Act).

A Financial Institutions Strategic Transfer Corporation (FISTC) established and organized pursuant to the provisions of the 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 revenue issuances, particularly on the following:

- a. Issuances of registered Sales Invoices or Official Receipts for every sale of goods or services;
- b. Keeping of registered Books of Accounts and other accounting records of business transactions;
- c. Withholding of taxes, if applicable;
- d. Filing of required tax returns; and
- e. Payment of correct taxes due on time.

Entities created under RA No. 9182, as amended (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 No. 9182, as amended.

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) of the Regulations:

- a. Transfer of a Non-Performing Loan (NPL) by a Financial Institution (FI) to a FISTC;
- b. Transfer of a Real and Other Properties Acquired (ROPA) by an FI to a FISTC;
- c. Dation in payment (*dacion en pago*) of an NPL by a borrower to an FI;
- d. Dation in payment (*dacion en pago*) of an NPL by a third-party, on behalf of a borrower, to an FI;
- e. Transfer of an NPL by an FI to an individual;
- f. Transfer of a ROPA by an FI to an individual;
- g. Transfer of an NPL by a FISTC to a third-party;
- h. Transfer of a ROPA by a FISTC to a third-party;
- i. Dation in payment (*dacion en pago*) of an NPL by a borrower to a FISTC or an individual;
- j. Dation in payment (*dacion en pago*) of an NPL by a third-party, on behalf of a borrower, to a FISTC or an individual;
- k. Transfer of an NPL by an individual to a third-party: and,
- l. 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).

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

- a. 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;
- b. 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;

- c. 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 (MCIT), 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.
- d. Value-Added Tax (VAT) 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

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

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

- i. In the case of transactions (a)(1), (a)(2), (a)(5) and (a)(6) of the Regulations, 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.
- ii. In the case of transactions (a)(1) to (a)(6) of the Regulations, 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) of the Regulations shall no longer apply.

- iii. In the case of transactions (a)(7), (a)(8), (a)(11) and (a)(12) of the Regulations, 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) of the Regulations shall no longer apply.
- iv. In the case of transactions (a)(9) and (a)(10) of the Regulations, 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.
- v. 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.
- vi. In the case of ROPAs acquired by a FISTC from Government Financial Institutions (GFIs) or Government-Owned or -Controlled Corporations (GOCCs) which are devoted to socialized or low-cost housing, they shall not be converted to other uses.
- vii. In the case of dation in payment NPL transactions (a)(3), (a)(4), (a)(9), and (a)(10) of the Regulations, the tax exemptions provided in paragraph (b) of the same Regulations 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.
- viii. In the case of transactions (a)(5), (a)(6), (a)(11) and (a)(12) of the Regulations, 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) of the same Regulations shall apply only to one acquisition of NPA (either NPL or ROPA) by an individual and to the subsequent transfer of the same NPA.
- ix. 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) of the Regulations, the tax exemptions provided in paragraph (b) of the same Regulations 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) of the Regulations.
- x. In the case of transaction (a)(4) and (a)(10) of the Regulations, the tax exemptions provided in paragraph (b) of the same Regulations 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.

- xi. In the case of transactions (a)(7), (a)(8), (a)(11) and (a)(12) of the Regulations, 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.
- xii. In the case of transactions (a)(5) and (a)(6) of the Regulations, 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.

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) of the Regulations 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 exemption 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.

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 MCIT of two percent (2%) 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.

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.

Investment Unit Instruments (IUIs) 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.

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.

The Procedural Guidelines relative to Certificate of Eligibility, transfer of real property located in the Philippines and transfer of shares of stocks in a domestic corporation are specified in the Regulations.

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 stated in the Regulations.

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 the following:

- a. List of taxable transactions;
- b. List of tax-exempt transactions; and
- c. List of partly tax-exempt and partly taxable transactions.

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.