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Status Quo Remains for REITs Despite Passage of the TRAIN and its Implementing Rules

Following the coming into force of the Tax Reform for Acceleration and Inclusion (“TRAIN”) Act on 1 January 2018, the Bureau of Internal Revenue (“BIR”) issued Revenue Regulations (“RR”) No. 13-2018 to implement the provisions of the TRAIN on value-added tax (“VAT”). Among the key highlights of RR No. 13-2018 is the modification of the list of VAT-exempt transactions. More specifically, VAT-exempt transactions now include tax-free exchange of properties pursuant to Section 40(C)(2) of the 1997 Tax Code, as amended, wherein no gain or loss is recognized.

Asked whether this means that transfers of assets to Real Estate Investment Trusts (“REIT”) are indeed VAT-exempt, BIR Deputy Commissioner Marissa O. Cabreros told BusinessWorld in a text message: “Yes, for those transferring real property to REITs, provided it falls within the requirement of Sec. 40(C)(2).” This means that the key to be VAT-exempt is the satisfaction of Section 40(C)(2), notwithstanding lack of a specific revenue issuance for REITs. Ms. Cabreros added that the BIR may no longer issue amended RRs for the tax treatment of REITs, as the issue may be addressed in its upcoming comprehensive implementing rules for VAT.

Previously, VAT exemption under Section 40(C)(2) needed to be threshed out in a BIR ruling which confirms the tax-free exchange of properties under the said provision. The inclusion of the VAT exemption for Section 40(C)(2) transactions removes the matter from the gray area, such that the VAT treatment of a REIT transaction, which complies with Section 40(C)(2), will already be a no-ruling area. Nonetheless, confirmation of compliance with Section 40(C)(2) requisites will most likely still require a BIR ruling, pending amendment of revenue issuances on the same.

VAT treatment is one of the reasons why REITs have not taken off since Republic Act No. 9856 (“REIT law”) was enacted in December 2009. The REIT law did not address the tax treatment of initial transfers of real property to REITs, which led the BIR to interpret the transaction in RR 13-2011 as subject to VAT, being ordinary assets being used in business or held for sale or lease.

If you have any questions or require additional information, please contact [Felix Sy](#), [Lorybeth Serrano](#) or the ZICO Law partner you usually deal with.

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