

INCOME TAX (ASSET-BACKED SECURITIZATION) REGULATIONS 2014

PU (A) 170
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IN exercise of the powers conferred by paragraph 154(1)(b) and 33(1)(d) of the Income Tax Act 1967 [Act 53], the Minister makes the following rules:

PART I PRELIMINARY CITATION AND COMMENCEMENT

- 1(1) These regulations may be cited as the **Income Tax (Asset-Backed Securitization) Regulations 2014**.
- 1(2) These Regulations are deemed to have come into operation from the year of assessment 2013.

THESE REGULATIONS AND CAPITAL MARKETS AND SERVICES ACT 2007 [ACT 671] TO BE READ TOGETHER

- 2 These Regulations shall be read together with the Capital Markets and Services Act 2007 including the guidelines issued by the Securities Commission under the said Act relating to asset-backed securities.

APPLICATION

- 3 These Regulations apply to an originator and a special purpose vehicle in an asset-backed securitization transaction authorized by the Securities Commission on or after 1 January 2013.

INTERPRETATION

- 4(1) In these Regulations—

“disposal” means sale, conveyance, assignment, settlement, alienation or transfer of any legal interest or right;

“property development” means an activity of acquiring land for the purposes of—

- (a) construction of completed residential, commercial or industrial buildings on such land, whether as a whole or by parcels, and the sale of such residential, commercial or industrial buildings; or
- (b) development and sale of vacant lots for the construction of completed residential, commercial or industrial buildings on such vacant lots, including homesteads, hobby farms, orchards, or for other similar purposes.
- (c) a company that has made a claim for a deduction under any rules made under section 154 of the Act.

- 4(2) The following terms and expressions used in these Regulations have the same meaning assigned to it in the guidelines referred to in regulation 2:

- (a) asset;

- (b) originator;
- (c) asset-backed securities;
- (d) special purpose vehicle; and
- (e) securitization transaction.

PART II
ORIGINATOR
PROCEEDS OR GAINS FROM THE DISPOSAL OF TRADE RECEIVABLES OR STOCK IN TRADE

5(1) In ascertaining the gross income of the originator in respect of a source consisting of a business—

- (a) any proceeds from the disposal of any trade receivables or stock in trade of the originator in respect of that source pursuant to a securitization transaction; or
- (b) where the trade receivables or stock in trade in respect of that source has been recognized in the accounts of the originator; any gains from the disposal of such receivables or stock in trade,

shall be deemed to have been accrued throughout the period of securitization transaction and shall constitute the gross income of the originator from that source in the basis period for a year of assessment that relates to the period of the securitization transaction.

5(2) The amount of gross income of the originator in the basis period for a year of assessment shall be determined in accordance with the following formula:

$$\frac{A \times C}{B}$$

where A is the number of days in the basis period for that year of assessment that falls within the period of the securitization transaction;

B is the total number of days in the period of the securitization transaction; and

C is the total proceeds or gains from the disposal of trade receivables or stock in trade of the originator

LOSS FROM DISPOSAL OF TRADE RECEIVABLES OR STOCK IN TRADE

6(1) Where trade receivables or stock in trade of the originator in respect of a source consisting of a business has been recognized in the accounts of the originator, any loss from the disposal of such trade receivables or stock in trade pursuant to a securitization transaction shall be deemed to have been incurred throughout the period of the securitization transaction and shall be allowed as a deduction in arriving at the adjusted income of the originator from that source in the basis period for a year of assessment that relates to the period of the securitization transaction.

6(2) The amount of loss from the disposal of the trade receivables or stock in trade pursuant to a securitization transaction to be allowed as deduction in the basis period for a year of assessment shall be determined in accordance with the following formula:

D X F
E

where D is the number of days in the basis period for that year of assessment that falls within the period of the securitization transaction;

B is the total number of days in the period of the securitization transaction; and

C is the amount of loss from the disposal of trade receivables or stock in trade of the originator

CALL OPTION TO BUY BACK

7(1) Notwithstanding regulations 5 and 6, in the case of a property development business, where any stock in trade in respect of that business is disposed of by the originator pursuant to a securitization transaction and the originator has a call option to buy back such stock in trade—

(a) any proceeds or gains from the disposal of such stock in trade shall be treated as a gross income; and

(b) the loss from the disposal of such stock in trade shall be allowed as a deduction in arriving at the adjusted income of the originator,

from that business in any basis period for a year of assessment in which the call option expires.

FORMULA UNDER ACCOUNTING STANDARD OR PRACTICE

8(1) The Director General may allow the originator to adopt a formula other than a formula specified in subregulations 5(2) and 6(2) for the purpose of ascertaining the amount of gross income of the originator and the amount of loss to be allowed as deduction.

8(2) The formula to be adopted by the originator as allowed by the Director General shall—

(a) be in accordance with the accounting standard or practice applicable during the basis period that relates to the securitization transaction;

(b) give a fair and reasonable amount of gross income or loss; and

(c) be applied throughout the securitization transaction period.

DISPOSAL OF FIXED ASSET

9(1) In ascertaining the statutory income of an originator from the disposal of fixed asset pursuant to a securitization transaction, any balancing charge or allowance under the Schedule 3 to the Act arising from such disposal, shall be deemed to have been made to the originator in the basis period for a year of assessment that relates to the period of the securitization transaction.

9(2) The amount of balancing charge or allowance to be made in the basis period for a year of assessment shall be determined in accordance with the following formula :

G X I
H

where G is the number of days in the basis period for that year of assessment that falls within the period of the securitization transaction;

H is the total number of days in the period of the securitization transaction; and

I is the amount of balancing charge or allowance from the disposal of fixed asset of the originator.

- 9(3) The disposal value of fixed asset shall be equal to a fair value based on the valuation report by an independent valuer, as submitted to the Securities Commission in relation to the asset-backed securities.
- 9(4) Paragraphs 38 and 71 of Schedule 3 of the Act shall not apply to the disposal of fixed asset.
- 9(5) The independent valuer referred to in subregulation (3) shall be appointed by the originator and approved by the Securities Commission.

PART III

SPECIAL PURPOSE VEHICLE

GROSS INCOME OF SPECIAL PURPOSE VEHICLE

- 10 Any income of the special purpose vehicle from all sources shall be treated as gross income of the special purpose vehicle from a single source consisting of a business in the basis period for a year of assessment.

ADJUSTED INCOME OF SPECIAL PURPOSE VEHICLE

- 11(1) Any expenses incurred by the special purpose vehicle for the acquisition of trade receivables or stock in trade pursuant to a securitization transaction which is deductible under the Act, shall be deemed to have been incurred throughout the period of the securitization transaction and shall be allowed as a deduction in arriving at the adjusted income of the special purpose vehicle in the basis period for a year of assessment that relates to the period of securitization transaction.
- 11(2) The amount of expenses incurred by the special purpose vehicle to be allowed as a deduction in the basis period for a year of assessment shall be determined in accordance with the following formula :

$\frac{J \times L}{K}$

where J is the number of days in the basis period for that year of assessment that falls within the period of the securitization transaction;

K is the total number of days in the period of the securitization transaction; and

L is the amount of expenses incurred by the special purpose vehicle for the acquisition of trade receivables or stock in trade which is deductible under the Act..

- 11(3) Notwithstanding subregulation (1), where the originator has a call option to buy back the stock in trade as provided for in regulation 7, any expenses incurred by the special purpose vehicle for the acquisition of such stock in trade which is deductible under the Act shall be allowed as a deduction in arriving at the adjusted income of the special purpose vehicle in the basis period for that year of assessment in which the call option expires.
- 11(4) The Director General may allow the special purpose vehicle to adopt a formula, other than the formula specified in subregulation (2).

11(5) The formula to be adopted by the special purpose vehicle as allowed by the Director General shall—

- (a) be in accordance with the accounting standard or practice applicable during the basis period that relates to the securitization transaction;
- (b) give a fair and reasonable amount of adjusted income; and
- (c) be applied throughout the securitization transaction period.

**PART IV
MISCELLANEOUS
BASIS PERIOD**

12 For the purpose of regulations 5,6,9 and 11, where the basis period for a year of assessment of an originator or a special purpose vehicle overlaps with the basis period for the preceding year of assessment, the number of days in respect of the basis period referred to in the formula specified in subregulations 5(2)m 6(2), 9(2) and 11(2), shall not include the number of days in the basis period for the year of assessment that overlaps with the basis period for the preceding year of assessment.

NON APPLICATION

13(1) Section 44A of the Act shall not apply to transfer of loss between originator and special purpose vehicle.

13(2) Section 60F and 60FA of the Act shall not apply to the special purpose vehicle.