

TECHNICAL

Direct Tax

LEGISLATION FOR TAX TREATMENT OF ASSET-BACKED SECURITIZATION TRANSACTION GAZETTED

Background

It was announced in the 2004 Budget that in order to stimulate the capital market and diversify sources of financing for economic development, the Government intended to ensure neutrality in the tax treatment between asset-backed securities and other securities approved by the Securities Commission (SC).

The following legislations which provide the legislative framework for taxation of ABS transactions have been gazetted recently.

1. [Income Tax \(Asset-Backed Securitization\) Regulations 2014 \[P.U.\(A\) 170/2014\]](#)
2. [Income Tax Leasing \(Amendment\) Regulations 2014 \[P.U.\(A\) 171/2014\]](#)

1. The main provisions of the [Income Tax \(Asset-Backed Securitization\) Regulations 2014](#) are summarized below:

<u>Regulation. No. & Heading</u>	<u>Summary</u>
1 & 2 "Citation and commencement"	<ul style="list-style-type: none"> These Regulations are deemed to have come into operations from the year of assessment (YA) 2013. These Regulations must be read together with the Capital Markets and Services Act 2007 including guidelines issued by the SC relating to asset-backed securities.
3 "Application"	These Regulations apply to an originator and a special purpose vehicle (SPV) in an ABS transaction authorized by the SC on or after 1 January 2013.
4 "Interpretation"	<ul style="list-style-type: none"> The following terms have the same meaning assigned to them in the guidelines issued by the SC referred as to in regulation 2: <ul style="list-style-type: none"> - Asset - Originator - Asset-backed securities - Special purpose vehicle - Securitization transaction Other terms defined are "disposal" and "property development".
	Originator
5 "Proceeds or gains from the disposal of trade"	<ul style="list-style-type: none"> In ascertaining gross income from a business source of the originator – <ol style="list-style-type: none"> (a) proceeds from the disposal of trade receivables or stock in trade of the originator in respect of that source pursuant to a securitization transaction (ST); or

receivables or stock in trade"	<p>(b) where the trade receivables or stock in trade have been recognized in the accounts of the originator, any gains from the disposal of such receivables or stock in trade</p> <p>shall be deemed to have accrued throughout the period of the ST and shall constitute the gross income of the originator from that source in the basis period for a YA that relates to the period of the ST.</p> <ul style="list-style-type: none"> The amount of gross income in the basis period for a YA is calculated using the formula $(A/B \times C)$ which is explained in regulation 5(2). [Basically, the formula apportions total proceeds or gains from disposal of trade receivables or stock in trade with the fraction obtained by dividing the number of days in the basis period (*) for that YA falling within the period of the ST, by the total number of days in the period of the ST. (*) <i>Excludes the number of days in the basis period for that YA that overlaps with the basis period for the preceding YA.</i>]
6 "Loss from disposal of trade receivables or stock in trade"	<ul style="list-style-type: none"> Where trade receivables or stock in trade of the originator in respect of a source consisting of a business has been recognized in the account of the originator, any loss from the disposal of trade receivables or stock in trade pursuant to a ST is deemed to have been incurred throughout the period of the ST and is allowed as a deduction in computing adjusted income of the originator from that source in the basis period for a YA that relates to the period of the ST. The amount of loss from the disposal of the trade receivables or stock in trade pursuant to a ST to be allowed as deduction in the basis period for a YA is calculated using the formula $(D/E \times C)$ which is explained in regulation 6(2). [The formula apportions the amount of loss in the same manner as employed in the formula for apportionment of income as set-out above.]
7 "Call option to buy back"	<ul style="list-style-type: none"> In the case of a property development business, where the originator has a call option to buy back stock in trade which has been disposed of pursuant to a ST – <ul style="list-style-type: none"> (a) the proceeds 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 YA in which the call option expires.
8 "Formula under accounting standard or practice"	<ul style="list-style-type: none"> The Director General may allow the originator to adopt a formula other than those specified above for the purpose of ascertaining the amount of gross income of the originator and the amount of loss to be allowed as deduction under specified conditions enumerated in regulation 8(2), the first of which is that the formula must be in accordance with the accounting standard or practice applicable during the basis period that relates to the ST.
9 "Disposal of fixed asset"	<ul style="list-style-type: none"> In ascertaining statutory income of an originator from the disposal of fixed asset pursuant to a ST, any balancing charge (BC) or allowance (BA) under the Income Tax Act 1967 (ITA) arising from the disposal is deemed to have been made to the originator in the basis period for a YA that relates to the period of the ST.

	<ul style="list-style-type: none"> The amount of BC or BA to be made in the basis period for a YA is calculated using the formula $(G/H \times I)$ which is explained in regulation 9(2). [The formula apportions the amount of BC or BA in the same manner as employed in the formula for apportionment of income as set-out above.] Paragraphs 38 and 71 of Schedule 3 of the ITA shall not apply to the disposal of fixed asset.
	Special Purpose Vehicle (SPV)
10 “Gross income of special purpose vehicle”	Any income of the SPV from all sources is to be treated as gross income of the SPV from a single source consisting of a business in the basis period for a YA.
11 “Adjusted income of Special Purpose Vehicle”	<ul style="list-style-type: none"> Any expenses incurred by the SPV for the acquisition of trade receivables or stock in trade pursuant to a ST which is deductible under the ITA is deemed to have been incurred throughout the period of the ST and is allowed as a deduction in ascertaining adjusted income of the SPV in the basis period for a YA that relates to the period of ST. The amount of expenses incurred by the SPV to be allowed as a deduction in the basis period for a YA is calculated using the formula $(J/K \times L)$ which is set out in regulation 11(2). [The formula apportions the amount of expenses incurred by the SPV for the acquisition of trade receivables or stock in trade pursuant to a ST which is deductible under the ITA in accordance with the fraction obtained by dividing the number of days in the basis period (*) for that YA falling within the period of the ST, by the total number of days in the period of the ST. (*) <i>Excludes the number of days in the basis period for that YA that overlaps with the basis period for the preceding YA.</i>] Where the originator has a call option to buy back stock in trade as provided in regulation 7, any expenses incurred by the SPV for the acquisition of such stock in trade which is deductible under the ITA is allowed as a deduction in computing adjusted income of the SPV in the basis period for that YA in which the call option expires. The Director General may allow the SPV to adopt a formula other than the one stated above $(J/K \times L)$ subject to the conditions as set out under regulation 11(5).
	Non-application
13 “Non-application”	<ul style="list-style-type: none"> Section 44A of the ITA shall not apply to transfer of loss between the originator and the SPV. Section 60F and 60FA of the ITA shall not apply to the SPV.

Please read the above Regulations in full at the official website of the [Attorney-General's Chambers](#) for full details of all provisions found in the Regulations.

2. To facilitate asset-backed securitization transactions, the [Income Tax Leasing \(Amendment\) Regulations 2014](#) amends the Income Tax Leasing Regulations 1986 [P.U.(A) 131/1986] by inserting after regulation 4, a new regulation 5 which states as follows:

“These Regulations shall not apply to a lease transaction in relation to an asset backed securitization transaction authorized by the Securities Commission on or after 1 January 2013.”

The amendment is deemed to have come into operation from the year of assessment 2013.

You may read the above Regulation in full at the official website of the [Attorney-General's Chambers](#).

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