Tax Bulletin

Special Issue on the Clarifications Regarding the Filing of the New Related Party Transaction Form and its Attachments

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Highlights

Revenue Memorandum Circular (RMC) No. 76-2020 issued on 29 July 2020 clarifies certain issues on the filing of BIR Form No. 1709 or the Related Party Transaction (RPT) Form and its attachments.

- The RMC clarified that the purpose of issuing Revenue Regulations 19-2020, which requires the submission of the RPT Form as an attachment to the Annual Income Tax Return (AITR), is to ensure that RPTs are properly disclosed, as well as to improve and strengthen the BIR's transfer pricing (TP) risk assessment and audit.

- The RPT Form shall be used to monitor compliance with the transfer pricing documentation (TPD) and will give the BIR an initial assessment of the following:

  1. Total gross amounts of RPTs per relationship type (parent, entities with joint control or significant influence over the entity, subsidiaries, associates, joint ventures in which the entity is a joint venture, key management personnel of the entity or its parent, other related parties); and,

  2. The countries of the foreign related party with whom the Philippine taxpayer has RPT and the details about the foreign related party.

- In selecting the taxpayers to be subjected to tax investigation, the BIR will analyze the information in the RPT Form and TPD, in addition to the taxpayer's level of profitability and tax paid in the Philippines.

- The RPT Form is to be completed by all individual and non-individual Philippine taxpayers, including non-stock and non-profit corporations, which have RPTs, regardless of the amount and volume.

- The RPT Form is required to be submitted as an attachment to the AITR for fiscal year ending (FYE) 31 March 2020, tentative or otherwise, and irrespective of the date of filing of the AITR, and to all AITRs to be submitted for taxable years ending after FYE 31 March 2020.

  AITRs for calendar year (CY) 2019 or taxable year ending prior to 31 March 2020 are not covered by the new RPT Form requirement.

  Taxpayers with taxable year ending 31 March 2020 are given another two months from 30 July 2020, or until 30 September 2020, within which to submit the RPT Form and its attachments.

- In case the RPT Form and its attachments are filed during the extended period, the taxpayer who already filed their AITR need not refile the AITR. A photocopy of the duly filed AITR will have to be submitted together with the RPT form and its attachments.

  The RPT Form is downloadable from the BIR website. Taxpayers may use additional sheets, if necessary. They may also transpose the form into an Excel format, and attach a printed copy thereof with appropriate marking as an integral part of the RPT Form.

- The manner and deadline for the submission of the RPT Form and its attachments are as follows:

    1. For manual AITR filers: the RPT Form and its attachments must be submitted together with the AITR on or before the statutory due date to the Large Taxpayers (LT) Division / Revenue District Office (RDO) where the taxpayer is registered;

    2. For eFPS AITR filers: the hardcopy of the RPT Form and its attachments must be submitted manually to the LT Division / RDO where the taxpayer is registered, within 15 days from the statutory due date or actual date of electronic filing of the AITR, whichever comes later.

    3. As a proof that it was duly received by the BIR, the RPT form must be stamped "Received" and must bear the date of actual receipt and the signature of the receiving officer.

- All taxpayers with related party transactions are required to attach a TPD, local or otherwise, regardless of the amount and volume of related party transactions.

- The TPD to be attached to the RPT Form must be contemporaneous, or must be prepared prior to or at the time of the transaction, or after the transaction, but not later than the date of filing of the tax return for the taxable year in which the transaction takes place to ensure the integrity of the taxpayer's position.

- The TPD must include the date of its creation or preparation so as to ensure its applicability to the RPTs conducted and the taxable year concerned.

- The TPD has to be updated yearly if there are significant changes in the business model, in the factors or conditions considered in drafting the TPD;

- The taxpayer may attach the TPD of its parent company or its company group's Masterfile, provided the TPD covers the transactions of the taxpayer and the taxpayer relied on such TPD in determining the transfer prices.

- Local TPD is preferred as it provides a more detailed information on the RPT.

- For this year's filing, the TPD for the immediately preceding year may apply to subsequent RPTs if:

    1. The transaction in the TPD for the preceding year is of the same type as the transaction subsequent taxable year concerned and was undertaken by the same related party or parties;

    2. The conditions upon which the previous year's TPD was based are squarely applicable to the RPTs in the taxable year concerned. These conditions, include, but are not limited to the following:

        - The relationship between the taxpayer and its related party;
        - The conditions made or imposed between them;
        - The TP method or methods used for the transactions; and
        - The arm's length conditions.

- As opposed to the Philippines Accounting Standards (PAS) 24, upon which Revenue Regulations No. 19-2020 is supposedly based and which requires disclosure of RPT in the Audited Financial Statements (AFS), the RMC clarifies that RR No. 19-2020 requires more details to be disclosed as to the taxation aspect or the tax treatment of the income received from, or income payments made to, related parties.

- The following must be indicated in Part II of the RPT Form:

    1. Registered name of the related party, its address and tax residence, and Tax identification Number;

    2. Summary of RPTs per nature of transaction;

    3. Amount of tax paid in the foreign country on all types of income received abroad, and the amount of tax withheld on income payments to foreign related parties; and,

    4. Declaration whether or not the taxpayer availed of tax treaty benefits to justify tax exemption or preferential tax treatment applied for.

- The following must be indicated in Part III of the RPT Form:

    1. Aggregate amount per transaction and per relationship type;

    2. Outstanding balance if payment was made on installment basis;

    3. Terms and conditions of the transaction (e.g. interest or non-interest bearing; secured or unsecured); and,

    4. Provision for doubtful debts and bad debt expenses recognized during the taxable year.

- The RMC clarifies that the enumeration of RPTs in RR No. 19-2020 is not exclusive, and shall include all transactions between related parties that result in the transfer of resources, services or obligations, irrespective of their arrangement and regardless of whether a price is charged. The RMC specifically mentioned the following transactions between or among related parties as also covered by the term RPT:

    1. Cost-recovery / cost-sharing / recharging;

        A cost-sharing arrangement must be supported by a formal written contract to prove that the covered expenses are legitimate and that the transaction has been conducted at arm's length, as well as receipts and other proofs of payment.

    2. Payment of dividends;

        The following documents have to be maintained as proof of dividend payment:

        - Notarized Board of Directors' resolution approving the issuance of dividends, which shall include, among others, the amount of dividends, as well as the dates of dividend declaration and payment;

- Sworn certification by the corporate secretary / custodian banks / depository account holders / broker / dealers stating in detail the legal and beneficial owners of all issued and outstanding shares as of record date, their corresponding subscriptions, acquisition date, ownership percentage, and dividend allocation;

- General Information Sheet for the year immediately preceding the declaration date;

- Proof of payment of dividends (e.g. bank certificate, telegraphic or wire transfer);

- Proof of withholding tax payment.

3. Redemption of shares

    - Regardless of their volume, all contracts are required to be attached to the RPT Form.

    - The following procedures shall be strictly observed in the submission of copies of required attachments to the RPT Form:

        1. Scanned copies of the documents may be saved in PDF file format and each file must be renamed using the following format: "registered name of the taxpayer type of document taxable year"

        2. In case of multiple contracts, the filename of each contract shall contain the following information: "registered name of the related party_name of contract"

        3. All files shall be stored in a Digital Versatile Disk-Recordable (DVD-R) and properly labelled.

        4. Taxpayer's authorized representative who has the custody of the original documents or has been involved in the preparation and signing of the original documents, must execute a sworn certification stating that the soft copies of the required attachments to the RPT Form contained in the DVD-R are the complete and exact copies of the original documents, which shall be made available for verification during audit.

        5. The DVD-R containing the PDF copies of the required attachments, together with a sworn certification, must be submitted to the BIR Office where the taxpayer is registered.

- The contracts to be attached to the RPT Form are those executed by the parties to substantiate the RPTs in the covered taxable year.

    1. Contracts executed in the taxable year concerned but are intended for transactions to be entered into in a subsequent year are not required to be attached;

    2. Contracts executed in the previous year, but which are still enforceable and applicable to the RPTs in the taxable year concerned, have to be attached.

- In a related party sale of goods, the same must be covered by a TPD and a contract of sale of goods or any equivalent genuine document must be submitted in addition to the sales invoices, delivery receipts and proof of payment of the consideration.

- The consequences for non-filing of the RPT Form and its required attachments are the following:

    1. Penalty of not less than P1,000 but not more than P25,000 shall be imposed if the failure is due to reasonable cause and not to willful neglect;

    2. Maximum penalty of P25,000 in case of repeated failure; and

    3. The taxpayer shall be summoned to produce the attachment. Failure or neglect to comply after receiving valid summons shall, upon conviction, subject the partner, president, general manager, branch manager, treasurer, officer-in-charge, and the employees responsible to fine of not less than P5,000 but not more than P10,000 and imprisonment of not less than 1 year but not more than 2 years.

- The following are the consideration on RPTs resulting in payment of foreign taxes:

    1. Taxes paid to a foreign country by a Philippine taxpayer must be declared, and the proof of payment thereof attached to the RPT Form, with due consideration for the following:

        - If the taxpayer earned an income from its related party in a foreign country, but has yet to pay the tax thereon after the filing of the RPT Form, the taxpayer still has to declare in the RPT Form such income and indicate in the column for withholding taxes that it did not pay any tax thereon;

        - If the taxpayer paid the corresponding tax after the filing of the RPT Form, the taxpayer must inform the tax examiner during audit of such fact and present the proof of payment thereof.

- Document showing payment of foreign taxes or copy of foreign ruling duly issued by the relevant foreign tax authority must be duly authenticated or apostilled.

- Tax Treaty Relief Applications (TTRAs) to be indicated in the RPT Form must be those filed with the BIR International Tax Affairs Division (ITAD) relative to the income payments made by the Philippine taxpayer to its related party or parties.

SGV & Co. maintains offices in Makati, Clark, Cebu, Davao, Bacolod, Cagayan de Oro, Baguio, General Santos and Cavite.

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The deadlines and timelines mentioned in this Tax Bulletin are pursuant to our understanding of the existing administrative issuances of the BIR as of the date of writing. These may be subject to change in light of the recently passed RA No. 11469 or the "Bayanihan to Heal as One Act," which authorizes the President to move statutory deadlines and timelines for the submission of documents and payment of taxes, fees, and other charges required by law, among others.