

This MAP Tax Bulletin for January 2021 was contributed by Isla Lipana & Co./PwC Philippines.

## **BIR ISSUANCES**

### **Submission of BIR Form No. 1709 and transfer pricing documentation** *Revenue Regulations No. 34-2020*

The pertinent provisions of Revenue Regulations (RR) No. 19-2020 and Revenue Memorandum Circular No. 76-2020 regarding the submission of BIR Form No. 1709 (the “RPT Form”) and transfer pricing documentation (TPD) have been amended as follows:

- A. Who are required to file the RPT Form together with the annual income tax return (ITR)?
1. Large Taxpayers;
  2. Taxpayers enjoying tax incentives, *e.g.*, taxpayers registered with the Board of Investments and with economic zone authorities;
  3. Taxpayers reporting net operating losses for the current taxable year and the immediately preceding two consecutive taxable years; and
  4. Related parties, as defined by Section 3 of RR No. 19-2020, who have transactions with taxpayers in Subsections 1, 2 or 3 above.

Key management personnel (KMP) shall no longer be required to file the RPT Form. Further, there shall be no requirement to report any transaction between KMP and the reporting entity/parent of the KMP in the RPT Form.

- B. When short-period annual ITRs are required, the RPT Form shall still be accomplished in all cases. However, compliance therewith shall only be mandatory for short-period returns filed in 2021 and subsequent years.
- C. The preparation and submission of TPD under RR No. 2-2013 shall be mandatory for the above-enumerated taxpayers who meet the following materiality thresholds:

1. Annual gross sales/revenue for the subject taxable period exceeding PhP150 Million and total amount of related party transactions exceeds PhP90 Million

In computing the threshold for related party transactions, the following shall be included:

- a. Amounts received and/or receivable from related parties, or amounts paid and/or payable to related parties but excluding compensation paid to KMP, dividends and branch profit remittances; and
  - b. Outstanding balances of loans and non-trade amounts due from/to all related parties.
2. Related party transactions meeting any of the following materiality thresholds:
    - a. If involving sale of tangible goods in an aggregate amount exceeding PhP60 Million within the taxable year; or
    - b. If involving service transaction, payment of interest, utilization of intangible goods or other related party transaction in an aggregate amount exceeding PhP15 Million within the taxable year.
  3. If TPD was required to be prepared during the immediately preceding year for exceeding the materiality thresholds under Subsections 1 or 2 above.

The TPD and other supporting documents as set out in Section 6 of RR No. 19-2020 shall no longer be attached to the RPT Form. However, the same shall be submitted within 30 calendar days upon request by the Bureau of Internal Revenue pursuant to a Letter of Authority, subject to a non-extendible period of 30 calendar days based on meritorious grounds.

D. In addition to the requirements under RR No. 21-2002, taxpayers who are not covered by Section A above are required to disclose in the Notes to the Financial Statements that they are not covered by the requirements and procedures for related party transactions under RR No. 34-2020.

E. The simplified version of the RPT Form shall be used in lieu of the old form.

### **Amendments to the VAPP regulations**

#### *Revenue Regulation No. 33-2020*

Revenue Regulations (RR) No. 21-2020, which implements the Voluntary Assessment and Payment Program (VAPP) covering taxable year 2018, has been amended as follows:

- The period for availment of the VAPP has been extended to 30 June 2021.
- Taxpayers who availed of the VAPP on withholding taxes shall be allowed to deduct the corresponding income payments pursuant to RR No. 6-2018.
- Any Notice of Discrepancy previously issued shall be withdrawn and cancelled after a Certificate of Availment (CA) is issued.

- Despite the issuance of a CA, the taxpayer’s availment shall be rendered invalid and shall be subject to audit when there is strong evidence or findings of under-declaration of sales, receipts or income, or overstatement of deductions by more than 30% based on a written report of the appropriate revenue official stating the facts with supporting documents such as Discrepancy Notice and other third party information documents.
- The denial of the VAPP application or the invalidation of a previously issued CA shall be valid only if the taxpayer is formally notified by the Division Chief (Large Taxpayers Office) or by the Revenue District Officer where the taxpayer is registered, stating the factual reasons therefor.

The above denial or invalidation may be appealed to the Assistant Commissioner – Large Taxpayers Service or to the Regional Director within 30 days from receipt of the notice.

### **Extended deadline for tax amnesty on delinquencies**

*Revenue Regulations No. 32-2020*

The deadline for availing the tax amnesty on delinquencies for taxable year 2017 and prior years under Republic Act No. 11213 has been moved to June 30, 2021.

### **Modified threshold for classification as top withholding agent**

*Revenue Regulations No. 31-2020*

Under Revenue Regulations (RR) No. 7-2019, top withholding agents (TWAs) refer to taxpayers whose gross sales/receipts, or gross purchases or claimed deductible itemized expenses amounted to PhP12 Million during the preceding taxable year.

This minimum threshold has been amended based on existing Group Classifications of the Revenue District Offices (RDOs), as follows:

<b>RDO Group Classification</b>	<b>Minimum Threshold</b>
Groups A and B	12 Million
Groups C, D and E	5 Million

### **Clarifying the fiscal years covered by the five-year NOLCO**

*Revenue Memorandum Circular No. 138-2020*

Under the Bayanihan to Recover as One Act, businesses suffering net operating losses for taxable years 2020 and 2021 shall be allowed to carry-over the same as deductions from gross income for the next five consecutive taxable years immediately following the year of loss.

Revenue Regulations No. 25-2020 define the term “taxable year” as the calendar year or fiscal year (FY) ending during such calendar year, upon the basis of which the net income is computed. In this regard, taxable years 2020 and 2021, as contemplated by the Bayanihan to Recover as One Act, shall include FYs ending on or before June 30, 2021, and June 30, 2022.

In this light, the Commissioner of Internal Revenue has clarified the following fiscal years which fall under taxable years 2020 and 2021:

Taxable Year 2020		Taxable Year 2021	
FY ending July 31, 2020	FY ending January 31, 2021	FY ending July 31, 2021	FY ending January 31, 2022
FY ending August 31, 2020	FY ending February 28, 2021	FY ending August 31, 2021	FY ending February 28, 2022
FY ending September 30, 2020	FY ending March 31, 2021	FY ending September 30, 2021	FY ending March 31, 2022
FY ending October 31, 2020	FY ending April 30, 2021	FY ending October 31, 2021	FY ending April 30, 2022
FY ending November 30, 2020	FY ending May 31, 2021	FY ending November 30, 2021	FY ending May 31, 2022
	FY ending June 30, 2021		FY ending June 30, 2022

Hence, NOLCO incurred by corporations with FYs ending before July 31, 2020 and FYs ending after June 30, 2022 can be carried over only for the next three consecutive taxable years.

### **Clarifying the determination of the new prescriptive dates**

*Revenue Memorandum Circular No. 136-2020*

Revenue Regulations No. 11-2020 suspended the running of the prescriptive periods to assess and collect taxes starting from March 16, 2020 until sixty days after the lifting of the quarantine. Accordingly, the three-year and five-year prescriptive periods shall exclude a total of one hundred thirty-seven (137) days.

To clarify how to determine the new prescriptive dates, the Bureau of Internal Revenue has provided the following illustration:

	<b>Original Prescriptive Date</b>	<b>New Prescriptive Date</b>
Case 1	March 15, 2020	March 15, 2020
Case 2	March 16, 2020	July 31, 2020
Case 3	April 15, 2020	August 30, 2020
Case 4	June 15, 2020	October 30, 2020
Case 5	July 15, 2020	November 29, 2020
Case 6	April 15, 2021	August 30, 2021

### **New Excise Tax Return for Cosmetic Procedures**

*Revenue Memorandum Circular No. 132-2020*

The Bureau of Internal Revenue (BIR) has prescribed the new BIR Form No. 2200-C (Excise Tax Return for Cosmetic Procedures) which is already available in the BIR website under the BIR Forms - Excise Tax Section.

However, it is not yet available in the Electronic Filing and Payment System (eFPS) and Electronic BIR Forms (eBIRForms). Hence, eFPS and eBIRForms filers shall continue to use BIR Form No. 0605 in filing and paying the excise tax due.

The deadline for filing and paying the excise tax is within ten days after the close of the month. If no invasive cosmetic procedure was performed which does not give rise to excise tax, BIR Form No. 2200-C shall still be filed.

Here are the tax filing/payment options:

1. Manual Payment

- Authorized agent banks (AABs) within the jurisdiction of the BIR office where the taxpayer is registered.
- Revenue Collection Officer of the RDO where the taxpayer is registered.

2. Online Payment

- GCash Mobile Payment
- Land Bank of the Philippines (LBP) Link.biz Portal (for taxpayers who have ATM accounts with LBP and/or holders of BancNet ATM/Debit/Prepaid Card)
- DBP Tax Online (for holders of Visa/Mastercard Credit Card and/or BancNet ATM/Debit Card)
- Union Bank Online Web and Mobile Payment Facility (for taxpayers who have accounts with Union Bank of the Philippines)
- PESONet through LBP Link.biz Portal (for taxpayers who accounts with RCBC or Robinsons Bank)
- Paymaya Mobile Payment

**Guidance for online meetings between the BIR and taxpayers**

*Revenue Memorandum Circular No. 130-2020*

Bureau of Internal Revenue (BIR) officers/employees and taxpayers may use digital or online media as alternative options to hold meetings. In order to ensure the order, uniformity and integrity of information during the conduct of such online meetings, the following guidelines and policies have been issued.

1. Online meetings with taxpayers or taxpayers' representatives shall be hosted by the BIR.
2. BIR officials/employees shall only use prescribed BIR email addresses when sending invitations for online meetings.
3. All online meetings must be pre-approved in writing by the concerned Division Chief for the National Office, Regional Director for Regional Offices and Revenue District Officer for Revenue District Offices.

4. Taxpayers' representatives shall have duly notarized Special Powers of Attorney from the taxpayer, including representatives with BIR Certificate of Accreditations.
5. Online meetings shall be conducted only if the taxpayer or taxpayer's representative requested a virtual meeting schedule via the BIR eAppointment System and clicked "Agree" to the BIR eAPPOINTMENT USER AGREEMENT, or submitted a duly accomplished BIR VIRTUAL MEETING AGREEMENT, for BIR offices with no BIR eAppointment System facility.
6. Proceedings during online meetings shall be strictly confidential. Hence, recording is strictly prohibited.

### **Sharing of confidential/personal MARINA information**

*Revenue Memorandum Circular No. 129-2020*

The Maritime Industry Authority (MARINA) and the Bureau of Internal Revenue (BIR) have entered into a Memorandum of Agreement (MOA) whereby the MARINA agreed to share confidential/personal information of MARINA-registered persons with the BIR to be utilized in the assessment and collection of taxes.

The type of personal information to be shared, mode of data sharing, frequency and other operational details are specified in the Technical Annex of the MOA. Data access shall be limited to the list of BIR officers/employees specified in said Technical Annex.

### **Suspension of all BIR audit and field operations**

*Revenue Memorandum Circular No. 127-2020*

The Commissioner of Internal Revenue (CIR) suspended all Bureau of Internal Revenue audit and field operations from December 15, 2020 to January 7, 2021. Hence, the BIR shall not conduct field audit, field operations or any business visitations pursuant to Letters of Authority/Audit Notices or Mission Orders.

Further, no written orders to audit shall be served except in the following cases:

1. Investigation of cases prescribing on or before April 15, 2021;
2. Tax evasion cases;
3. Processing and verification of estate tax returns, donor's tax returns, capital gains tax returns and withholding tax returns on the sale of real properties or shares of stocks together with related documentary stamp tax returns;
4. Examination and/or verification of taxes of taxpayers retiring from business;
5. Monitoring of privilege stores (tiangge); and
6. Other matters where deadlines have been imposed or under the orders of the CIR.

To ensure maximum revenue collection, Notices to avail the Tax Amnesty on Delinquencies, Estate Tax Amnesty and Voluntary Assessment and Payment Program should still be served.

## **Taxation of intercorporate dividends to nonresident foreign corporations**

*Revenue Memorandum Order No. 46-2020*

Under Section 28(B)(5)(b) of the Tax Code, intercorporate dividends paid by a domestic corporation to a nonresident foreign corporation (NRFC) are subject to the reduced 15% income tax if the country of residence of the NRFC shall allow a credit against its tax due taxes deemed to have been paid in the Philippines equivalent to 15%, which represents the difference between the 30% regular corporate income tax and the reduced 15% income tax on dividends.

In this light, the Bureau of Internal Revenue (BIR) has provided the following guidelines and requirements for NRFCs intending to avail of the 15% reduced income tax:

1. The reduced 15% income tax rate may be applied to cash and/or property dividends declared by corporations, irrespective of their income tax regimes (*e.g.*, 30% regular corporate income tax rate, other income tax rates under the Tax Code, income tax holiday and other special tax regimes);
2. The domestic corporation paying the dividends may remit the dividends to the NRFC and apply the reduced 15% income tax rate without first securing a BIR ruling. However, it must determine whether the existing law of the country of domicile allows the NRFC a “deemed paid” tax credit equivalent to the 15% waived by the Philippines or exempts from tax the dividends paid.
3. Foreign law can be established by complying with the mandate of Section 24 and 25, Rule 132 of the Revised Rules of Court. If the country of domicile of the NRFC is a member of the Apostille Convention, a foreign law can also be established by submitting an apostilled copy thereof.
4. Within ninety days from the remittance of the dividends or from the determination by the foreign tax authority of the deemed paid tax credit/non-imposition of tax because of the exemption, whichever is later, the NRFC or its authorized representative shall file with the International Tax Affairs Division of the BIR a request for confirmatory ruling.

Revenue Memorandum Order No. 46-2020 enumerates the general and special documentary requirements for first and subsequent applications.

5. Holders of Philippine Depositary Receipts may also be entitled to the reduced rate subject to the fulfillment of certain conditions.
6. The BIR shall issue a certification signed by the Assistant Commissioner for Legal Service in lieu of a BIR ruling. However, in case of denial, a BIR ruling shall be issued containing the factual and legal bases therefor. The denial is appealable to the Department of Finance within thirty days from receipt.
7. The NRFC may opt to avail of the 15% income tax rate under the Tax Code regardless of whether an applicable tax treaty exists. If the taxpayer is not entitled to the 15% Tax Code

rate, the tax treaty shall automatically apply provided that the NRFC is able to prove entitlement to tax treaty benefits.

## **Revised requirements and procedures for Tax Residency Certificate applications**

*Revenue Memorandum Order No. 46-2020*

The Commissioner of Internal Revenue amended Revenue Memorandum Order (RMO) No. 51-2019. In this regard the documentary requirements for Tax Residency Certificate (TRC) applications have been revised as follows:

### **A. For individuals**

1. Duly accomplished BIR Form No. 0902
2. Certified true copy of the following:
  - a. Contract duly signed by both parties or any competent proof of transaction;
  - b. BIR-registered invoice/receipt issued by the taxpayer to the income payor and relevant Authority to Print or Permit to Use Computerized Accounting System/Loose-Leaf Receipts/Invoices; and
  - c. Proof or remittance if income was already received.
3. Photocopy of passport booklet of Residency Certificate issued by the Barangay Chairman if the applicant never left the Philippines;
4. Annual income tax return for the immediately preceding year; and
5. Notarized Special Power of Attorney (SPA) or authorization letter in favor of an authorized representative expressly stating the authority to sign BIR Form No. 0902 and to file the TRC application.

### **B. For non-individuals**

1. Duly accomplished BIR Form No. 0902
2. Proof of establishment in the Philippines;
3. Certified true copy of the following:
  - a. Contract duly signed by both parties or any competent proof of transaction;
  - b. BIR-registered invoice/receipt issued by the taxpayer to the income payor and relevant Authority to Print or Permit to Use Computerized Accounting System/Loose-Leaf Receipts/Invoices; and
  - c. Proof or remittance if income was already received.
4. List of partners if the applicant is a general professional partnership;
5. Annual income tax return for the immediately preceding year; and
6. Notarized SPA or authorization letter in favor of an authorized representative expressly stating the authority to sign BIR Form No. 0902 and to file the TRC application.

The following should also be noted:

- The duly accomplished BIR Form No. 1902 submitted shall be in lieu of the previously required letter-request.



- The assigned case officer shall inform the applicant of any deficiency in the requirements within three working days via registered mail or email.
- All TRC applications shall be acted upon within fourteen working days from the submission of complete documentary requirements.
- The Bureau of Internal Revenue shall continue to issue its own TRC Form which shall be signed by the Assistant Commissioner for Legal Service.
- When a taxpayer fails to secure a TRC and pays income taxes in a foreign country, such foreign income taxes paid may be credited against Philippine income taxes. However, RMO No. 46-2021 provides that in such case, the tax auditor shall not allow as foreign tax credit the taxes paid in the foreign country but shall instead advise the taxpayer to secure a TRC and file a claim for tax refund in the foreign country.

### **VAT refund claims of resident foreign missions and qualified personnel**

*Revenue Memorandum Order No. 41-2020*

The Commissioner of Internal Revenue clarified the policies and procedures for claims for value-added tax (VAT) refunds of the following:

- a. Resident foreign missions (RFMs), their qualified personnel including the personnel's qualified dependents whose VAT privileges were transitioned from point-of-sale VAT exemption into VAT refund; and
- b. RFMs, their qualified personnel including the personnel's qualified dependents who were granted point-of-sale VAT exemption but were not accorded such privilege by the transacting business establishments.

The policies and procedures include the following:

- a. All business establishments are directed to honor and recognize the VAT Certificate or VAT Identification Card issued by the BIR to the RFMs, their qualified personnel and the personnel's dependents when presented by them at the point of sale, irrespective of whether the purchase was made online.
- b. Invoicing for VAT refund purposes
  - Since RFMs, their qualified personnel and the personnel's dependents are not VAT-registered taxpayers, the VAT invoice/official receipt that must be presented when claiming VAT refunds need not contain the name, address and TIN of the purchaser.
  - Tape receipts/invoices issued by business establishments reflecting the claimant's name using membership/loyalty cards would be considered as sufficient evidence.
  - For credit transactions, tape receipts/invoices generated from BIR-registered Cash Register Machines/Point-of-Sale Machines (CRM/POS Machines) incapable of

encoding the purchaser's information would suffice, provided the transaction is supported by a credit card slip and statement of account.

- For cash transactions where the CRM/POS Machines are incapable of encoding the purchaser's information, business establishments shall issue a manual receipt bearing the purchaser's information.
- For online transactions, the claimant must likewise secure the same receipts as discussed above. The claimant is hereby advised not to transact with business establishments that cannot issue BIR-registered receipts/invoices.

c. Documentary requirements for VAT refund applications

- d. The usual procedures for the processing of VAT refund claims of VAT-registered taxpayers shall not apply to the RFMs, their qualified personnel and the personnel's dependents because of their unique situation. The applicable procedures are provided under Revenue Memorandum Order No. 41-2020.