

Transfer Pricing - - Substance and New Form



Agenda

1. Relevance and Importance of Transfer Pricing
2. RR 19-2020 & RR 34-2020 (“Information Return on RPTs”)
3. Taxpayer To Do’s

The background features a repeating pattern of stylized human figures. Each figure is composed of a solid-colored head and torso (in shades of orange, red, and yellow) centered within a series of concentric white circles. The circles are arranged in a grid-like fashion, creating a textured, circular pattern across the entire slide.

Relevance

and

Importance of
Transfer Pricing

“

What is Transfer Pricing?

The charging of goods and services between **associated enterprises**.

It covers the pricing of both
a. **cross-border transactions**
b. **intra-firm transactions**

The **covered transactions** may include:

- Transfers of tangible and intangible goods
- Leases
- Provision of services
- Loans
- Other financing transactions

“

Why is Transfer Pricing Important?



MNEs are concerned in the **tax liabilities of the Group** as a whole



Profits and/or deductions may be **controlled or manipulated**



The objective is to pay **lower tax or no tax**



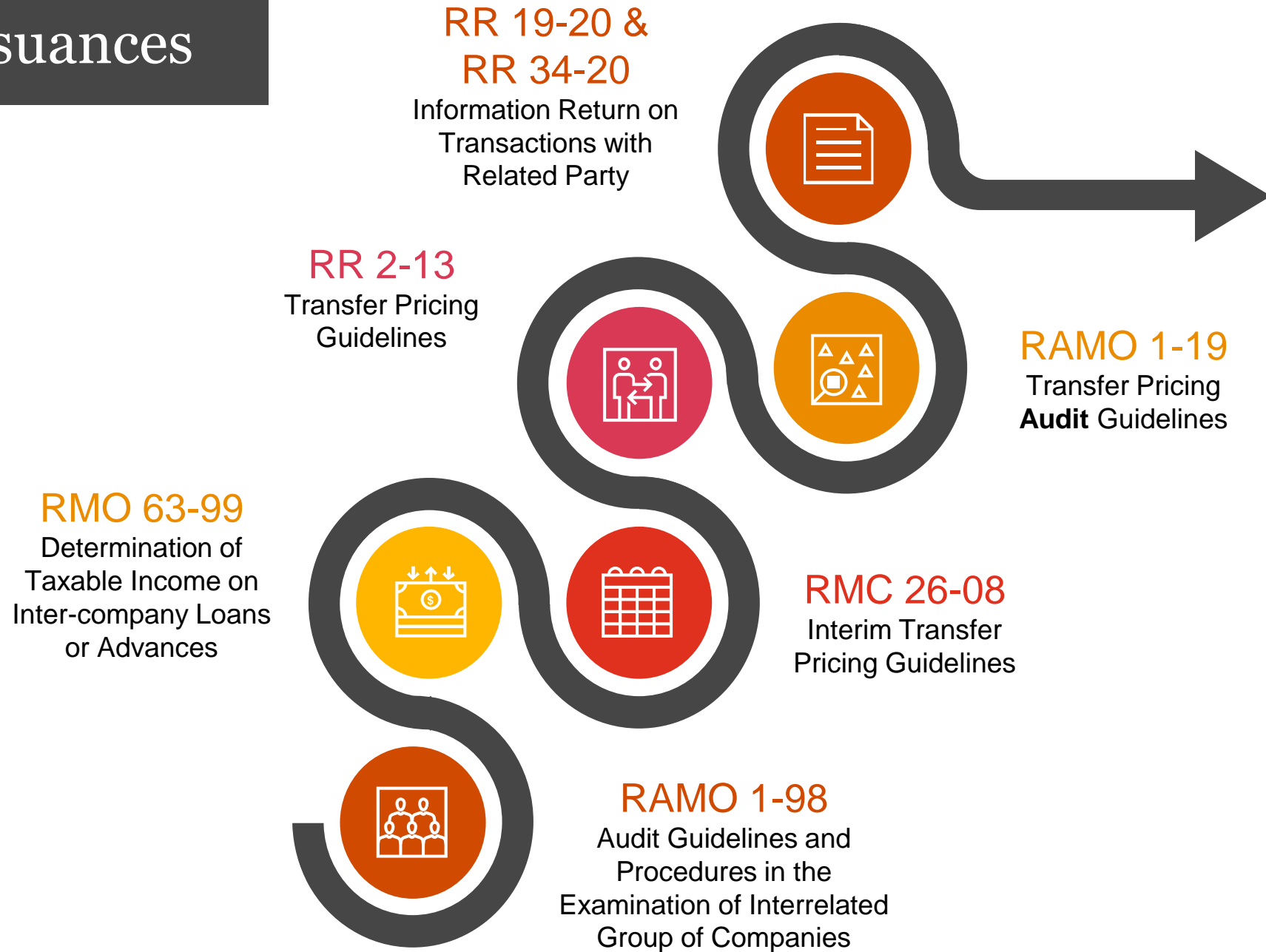
This loss of revenue has led to **close scrutiny by tax authorities**



The Commissioner is authorized to distribute, apportion, or allocate gross income or deductions among the parties if he determines that such distribution, apportionment, or allocation is necessary *to prevent tax evasion* or *clearly to reflect the income*

Sec. 50 of NIRC

BIR Issuances



Submission of **BIR Form No. 1709**
Provision of **materiality thresholds** for TP requirements.

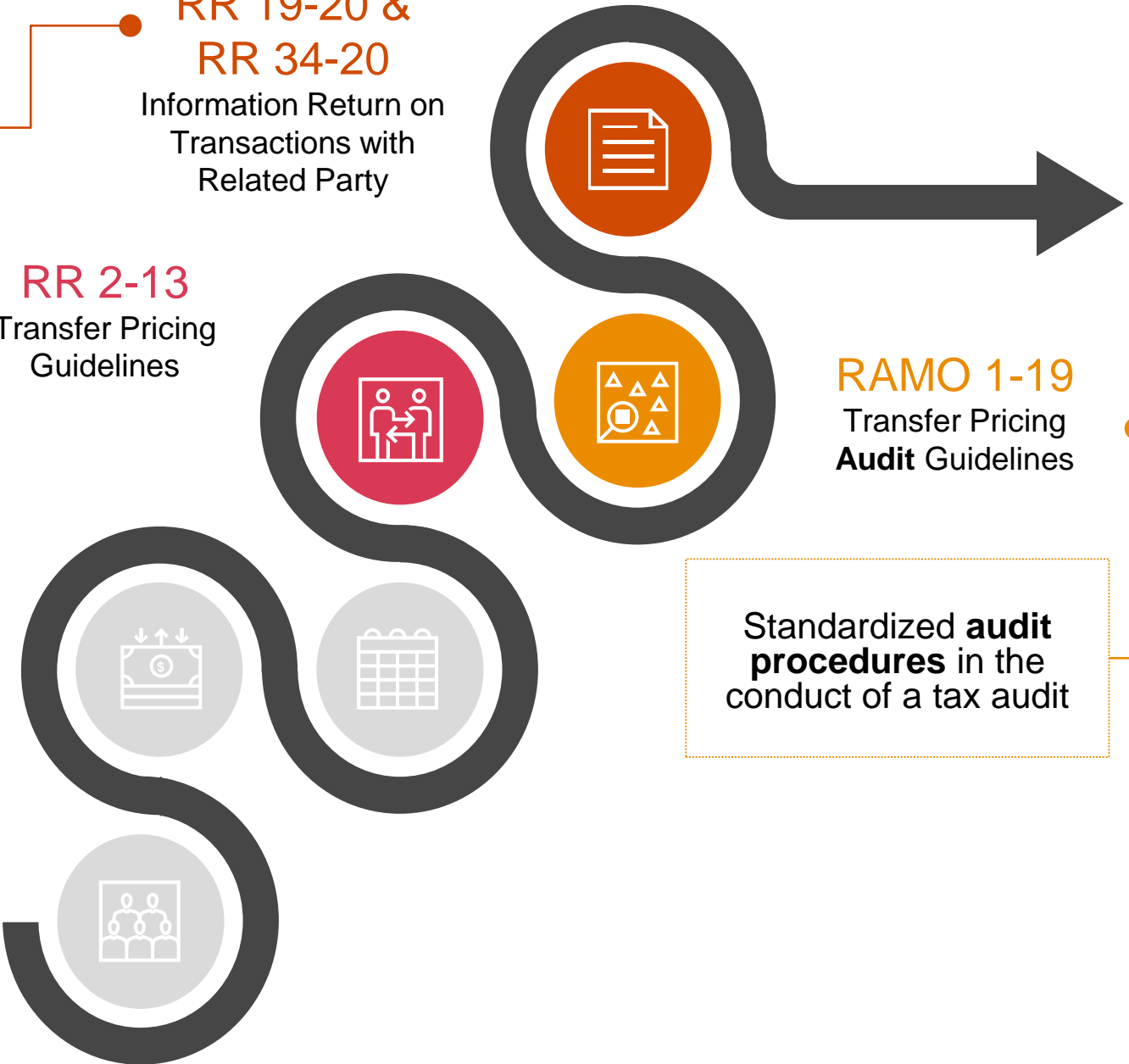
RR 19-20 & RR 34-20
Information Return on Transactions with Related Party

RR 2-13
Transfer Pricing Guidelines

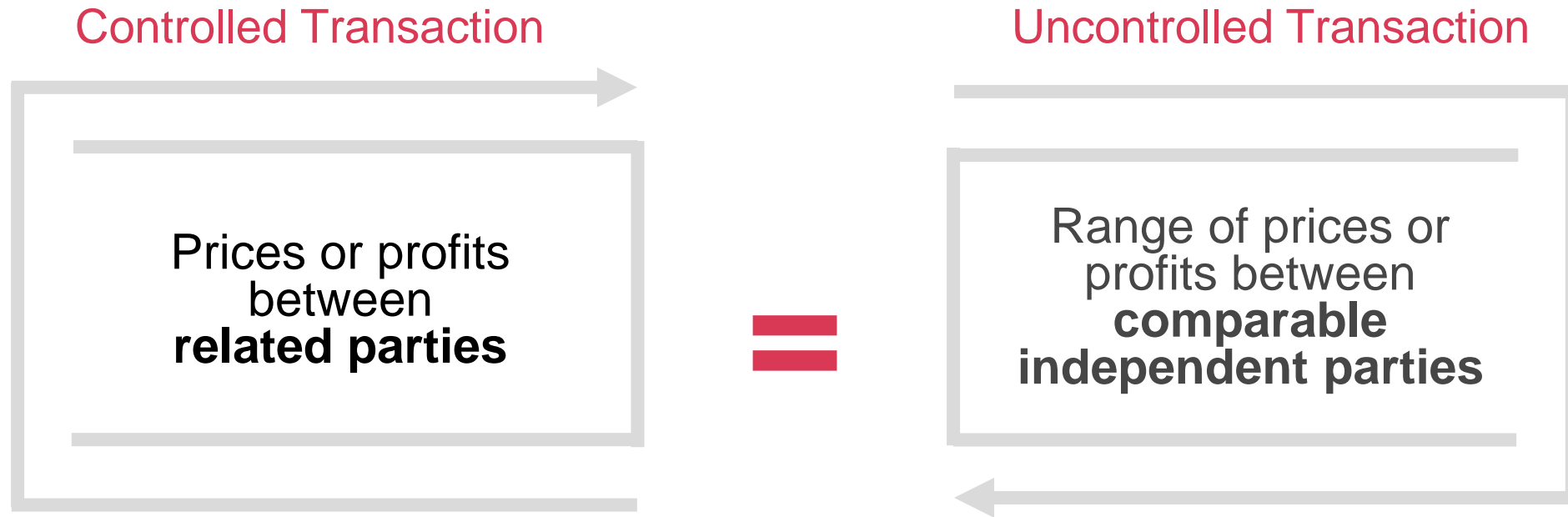
RAMO 1-19
Transfer Pricing **Audit** Guidelines

Guidelines in applying the arm's length principle
Maintenance of a **TP documentation**

Standardized **audit procedures** in the conduct of a tax audit



Arm's length principle



- The standard applied in every TP analysis.
- Requires the transaction with a related party to be made under comparable conditions and circumstances as a transaction with an independent party. Simply put, the terms, conditions and pricing of transactions between related companies should be the same as those that would be applied by independent parties undertaking the same transactions.

 RR 19-2020 & RR 34-2020

Information Return on Transactions with Related Party



What is the purpose of BIR Form No. 1709?



To monitor reporting of **related party transactions** and compliance with the arm's length standard.



To improve and strengthen the **BIR's transfer pricing risk assessment.**



To determine **which transactions would require thorough review or audit.**

RR 19-2020

Effective July 25, 2020

RR 34-2020

Effective December 22, 2020

	RR 19-2020 Effective July 25, 2020	RR 34-2020 Effective December 22, 2020
Objective	Prescribes the submission of the RPT Form as well as other supporting documents, as integral parts of the Annual ITR.	Provides safe harbors & materiality thresholds for TP requirements. Introduces a simplified version of the RPT Form in lieu of the old form.
Taxpayers required to prepare the RPT Form	ALL taxpayers with domestic or foreign RPTs including Key Management Personnel (KMP).	ONLY taxpayers meeting any of the ff.: <ul style="list-style-type: none">a) Large Taxpayers;b) Enjoying tax incentives;c) Reporting net operating losses for the current taxable year and the immediately preceding two (2) consecutive taxable years;d) Transacting with related parties falling under (a),(b), or (c) Removes KMP disclosures. <i>Additionally, taxpayers not covered hereof are required to disclose in the AFS that they are not covered by the requirements and procedures provided under this RR.</i>
Submission of RPT Form	For Manual Filers → with the AITR For eFPS Filers → within 15 days from statutory due date or actual filing, whichever is later	No Changes

RR 19-2020

Effective July 25, 2020

RR 34-2020

Effective December 22, 2020

Taxpayers required to maintain a TPD & Other Supporting Documents

ALL taxpayers with RPTs regardless of amount (no materiality threshold).

Taxpayers enumerated under Sec. 2 who meet any of the following materiality thresholds:

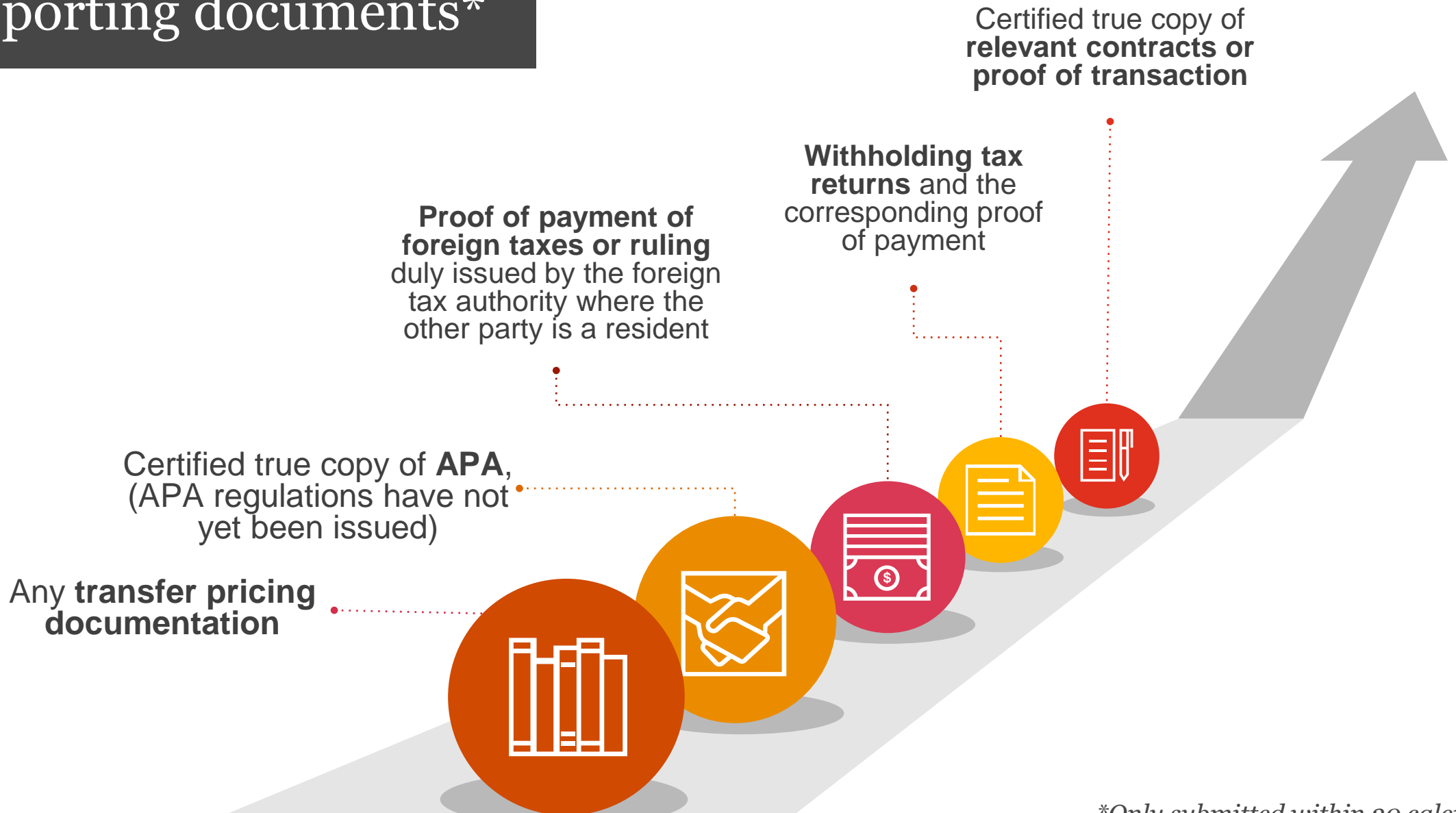
- a) Annual gross sales/revenue > **₱150M** and the total amount of RPTs > **₱90M**, excluding compensation paid to KMP, dividends and branch profit remittances; and
- b) RPTs meeting the following materiality threshold:
 - i. Sale of tangibles > **₱60M**;
 - ii. Services, payment of interest, utilization of intangibles or other RPTs aggregating **₱15M**; or
- c) If TPD was required during the immediately preceding taxable period for exceeding (a) or (b) above.

Submission of TPD & Others

Submitted **together with the RPT Form.**

Submitted **within 30 calendar days upon receipt of a duly issued LOA** covering All Internal Revenue Taxes, subject to non-extendible period of 30 calendar days based on meritorious grounds.

Supporting documents*



**Only submitted within 30 calendar days in the event of a tax audit.*



Proof of transaction

Contracts are the **primary** proofs of transaction

- Official Receipts / Invoices only serve as supporting or corroborating evidence.
- **ALL** contracts / proofs of transaction pertaining to the RPTs of the taxable year concerned must be attached to the Form.
- **If voluminous and repetitive**, taxpayer may submit the documents in a DVD-R, in lieu of their hard copies.



Scan

the original copies through scanning machine or device



Save

in PDF file format



Store

the files in a DVD-R and label the same



Submit

with a sworn certification signed by the authorized representative

Transfer pricing documentation

For the fiscal year

Nature of Business, Industry Conditions

Org Structure, Strategies, Policies

Controlled Transactions

Cost contribution arrangements, if any

Comparability, Functional, Risk Analysis

Transfer Pricing Method

CUP

RPM

CPM

TPSM

TNMM

****Also include background documents and index to documents***



How is the Form filled out?

- **Completely & truthfully**

Accomplished by the taxpayer or its authorized representative and shall be attached to the ITR.

The hardcopy of the RPT Form must be submitted manually and stamped “*Received*” at the LTDO/RDO where the taxpayer is registered, and must bear the date of actual receipt and the signature of the receiving officer.

- **No spaces left unanswered**

If one/some portions are not applicable, such fact shall be so stated.

“

How is the Form filled out?

- Given the limited spaces in the RPT Form, taxpayers may either:
 - A. **Use additional sheets** of the Form; or
 - B. **Attach Annexes** to the Form to appropriately disclose all required information

Procedures and guidelines

1

Background information of the taxpayer

Provides the covered year, RDO, TIN, taxpayer's name, address and contact details.

2

(A-B)

Details of related parties according to country of residence *(Domestic & Foreign)*

Name, nature of relationship, location, TIN, existence of permanent establishment.

3

(A-E)

Breakdown of RPTs according to category *(Sale, Purchase, Loans to, Loans from, Others)*

4

(A-H)

Additional Disclosures

Describes the business overview of the ultimate parent and the taxpayer, functional profile, as well as any changes in operations. It also discloses pending tax treaty relief applications and APAs. As an additional requirement under RR No. 34-2020, the existence of a TP Documentation is further disclosed.


New BIR Form No. 1709

Part I. Background Information

Part II. Details of Related Parties

Part III. Related Party Transactions

Part IV. Additional Disclosures

For BIR Use Only		BCS/Item:		Republic of the Philippines Department of Finance Bureau of Internal Revenue			
BIR Form No. 1709		INFORMATION RETURN ON TRANSACTIONS WITH RELATED PARTY (FOREIGN AND/OR DOMESTIC)					
December 2020 (ENCS) Page 1		Enter all required information in CAPITAL LETTERS using BLACK ink. Mark applicable boxes with an 'X'. Two copies must be filed with the BIR and one held by the Tax Filer.				1709 12/20ENCS P1	
1 For the <input type="checkbox"/> Calendar <input type="checkbox"/> Fiscal		2 Year Ended (MM/YYYY)		3 Number of Sheet/s Attached			
Part I – Background Information							
4 Taxpayer Identification Number (TIN)				5 RDO Code			
6 Taxpayer's Name (Last Name, First Name, Middle Name for Individual OR Registered Name for Non-Individual)							
7 Registered Address (Indicate complete address. If branch, indicate the branch address. If the registered address is different from the current address, go to the RDO to update registered address by using BIR Form No. 1905)							
8 Contact Number (Landline/Cellphone No.)				9 Email Address		7A ZIP Code	

New BIR Form No. 1709

Part I. Background Information

Part II. Details of Related Parties

Part III. Related Party Transactions

Part IV. Additional Disclosures

- A. Foreign Related Parties
- B. Domestic Related Parties

Part II – Details of Related Parties						
<i>(Fill out the table properly. Write N/A if not applicable and use additional sheet/s, if necessary)</i>						
A. Foreign Related Parties						
Name	Nature of Relationship	Country of Residence	Foreign TIN	Local TIN	With Permanent Establishment (PE) in the Philippines? (Yes/No)	TIN of PE
B. Domestic Related Parties						
Name	Nature of Relationship	TIN	Registered Address			

New BIR Form No. 1709

Part I. Background Information

Part II. Details of Related Parties

Part III. Related Party Transactions

Part IV. Additional Disclosures

- A. Sale of Goods and Provisions of Services
- B. Purchase of Goods and Provisions of Services
- C. Loans Granted to or Non-Trade Receivable from
- D. Loans Received from or Non-Trade Payable to
- E. Others *excluding KMP Compensation, Dividends, and Branch Profit Remittances*

Part III – Related Party Transactions							
A. Sale of Goods and Provisions of Services							
Name of Related Party	Description and Type of Transactions	Amount in Foreign Currency (if applicable)	Amount (in Php)	Were you granted treaty benefit in the source country? (Yes/No)	Income Tax Withheld by the Income Payor		
B. Purchase of Goods and Services Except Those Provided by Key Management Personnel (KMP)							
Name of Related Party	Description and Type of Transactions	Amount in Foreign Currency (if applicable)	Amount (in Php)	Did the income recipient claim treaty benefit? (Yes/No)	Was a TTRA filed therefor? (Yes/No)	Income Tax Withheld by the Income Payor (if any)	Is the income payment attributable to PE? (Yes/No)
C. Loans Granted to or Non-Trade Receivable from (Related Parties)							
Name of Related Party	Opening Balance	Loans Granted During the Taxable Period	Terms and Conditions	Outstanding Balance as of the End of the Taxable Period	Provisions for Doubtful Debts (if any)*	Bad Debts Expense Recognized During the Period (if any)**	
D. Loans Received from or Non-Trade Payable to (Related Parties)							
Name of Related Party	Opening Balance	Loans Received During the Taxable Year	Terms and Conditions	Outstanding Balance as of the end of the Taxable Year			
E. Other Related Party Transactions Excluding Compensation Paid to KMP, Dividends and Branch Profit Remittances							
Name of Related Party	Description and Type of Transactions	Amount in Foreign Currency (if applicable)	Amount (in Php)				

New BIR Form No. 1709

Part I. Background Information

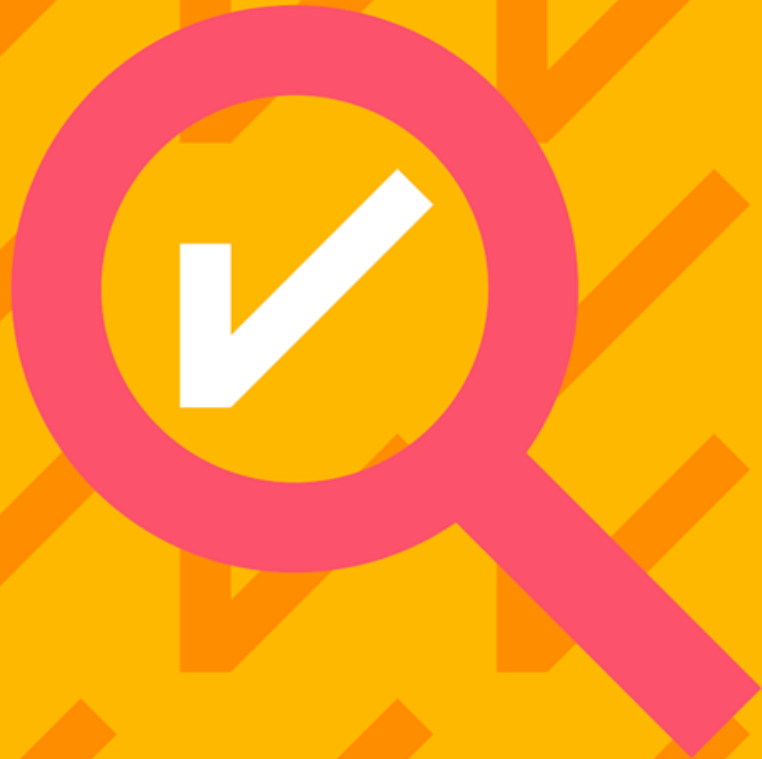
Part II. Details of Related Parties

Part III. Related Party Transactions

Part IV. Additional Disclosures

- A. Brief business overview of parent
- B. Brief business overview / functional profile of the taxpayer
- C. Change in functional profile
- D. Change in ownership structure
- E. Business restructuring for the last 5 years
- F. Existing TP Documentation
- G. Any pending Tax Treaty Relief Application
- H. Any Advance Pricing Agreement

Part IV – Additional Disclosure	
A. Brief business overview of the ultimate and immediate parent/s of the taxpayer	
<input type="text"/> <input type="text"/> <input type="text"/>	
B. Brief business overview/functional profile of the taxpayer	
<input type="text"/> <input type="text"/> <input type="text"/>	
C. Has there been any change in your functional profile during the taxable period? If yes, provide details. <input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="text"/> <input type="text"/> <input type="text"/>	
D. Has there been any change in your ownership structure during the taxable period? If yes, provide details. <input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="text"/> <input type="text"/> <input type="text"/>	
E. Did you undergo business restructuring during the taxable period or for the last five (5) years? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, provide details.	
<input type="text"/> <input type="text"/> <input type="text"/>	
F. Have you prepared a Transfer Pricing Documentation (TPD) for the related party transactions as prescribed under Revenue Regulations No. 2-2013? The details of the TPD include, but are not limited to the following: Organizational Structure (b) Nature of the Business/Industry and Market Conditions; (c) Controlled Transactions; (d) Assumptions, Strategies, and Policies; (e) Cost Contribution Arrangement (CCA); (f) Comparability, Functional and Risk Analysis; (g) Selection of the Transfer Pricing Method (TPM); (h) Application of the TPM; (i) Background Documents; (j) Index to Documents. <input type="checkbox"/> Yes <input type="checkbox"/> No	
G. Do you have pending application/s for relief with the BIR or with the tax authority of other country/ies? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, provide details.	
<input type="text"/> <input type="text"/> <input type="text"/>	
H. Do you have an Advance Pricing Agreement (APA) with your related parties? <input type="checkbox"/> Yes <input type="checkbox"/> No	
<p>I/We declare, under the penalties of perjury that this return has been made in good faith, and that, to the best of my/our knowledge and belief, all pieces of information provided in this return are correct, complete and true account of the related party transactions. Further, the required attachments to this return shall be made available during audit. Finally, I/we give my/our consent to the processing of my/our information as contemplated under Republic Act No. 10173, otherwise known as the Data Privacy Act of 2012, for legitimate and lawful purposes. (If authorized representative, please attach an authorization letter.)</p>	
<p>Stamp of receiving Office and Date of Receipt (RO's Signature)</p>	
<p>Signature over Printed Name of Taxpayer/Authorized Representative/Tax Agent (Indicate Title and TIN)</p>	
<p>Tax Agent Accreditation Number/Atty.'s Roll Number (if applicable)</p>	
Date of Issue (MM/DD/YYYY)	Date of Expiry (MM/DD/YYYY)



Taxpayer To Do's

Taxpayer To Do's

<input checked="" type="checkbox"/>	Check if the taxpayer will meet the criteria and revenue thresholds provided under RR No. 34-2020.	
<input type="checkbox"/>	Accomplish BIR Form No. 1709 <i>if applicable</i>	Submission Deadline: 15 days from statutory due date or actual filing
<input type="checkbox"/>	Maintain a contemporaneous TP documentation	
<input type="checkbox"/>	Collate documents to support RPT <ul style="list-style-type: none">■ Certified true copy of the relevant contracts or proof of transaction■ Withholding tax returns and the corresponding proof of payment of taxes withheld and remitted to the BIR;■ Proof of payment of foreign taxes or ruling duly issued by the foreign tax authority where the other party is a resident;■ Certified true copy of Advance Pricing Agreement (“APA”), if any	Submission Deadline: 30 calendar days from receipt of LOA
<input type="checkbox"/>	Accomplish TP audit forms ahead of time in order to be adequately prepared during a TP audit	Submission Deadline: 5 working days from receipt of notice

Taxpayer To Do's



Check if the taxpayer will meet the criteria and revenue thresholds provided under RR No. 34-2020.



Accomplish BIR Form No. 1709 *if applicable*

Submission Deadline: 15 days from statutory due date or actual filing



Maintain a contemporaneous TP documentation



Collate documents to support RPT

- Certified true copy of the relevant contracts or proof of transaction
- Withholding tax returns and the corresponding proof of payment of taxes withheld and remitted to the BIR;
- Proof of payment of foreign taxes or ruling duly issued by the foreign tax authority where the other party is a resident;
- Certified true copy of Advance Pricing Agreement (“APA”), if any

Submission Deadline: 30 calendar days from receipt of LOA



Accomplish TP audit forms ahead of time in order to be adequately prepared during a TP audit

Submission Deadline: 5 working days from receipt of notice

Taxpayer To Do's



Check if the taxpayer will meet the criteria and revenue thresholds provided under RR No. 34-2020.



Accomplish BIR Form No. 1709 *if applicable*

Submission Deadline: 15 days from statutory due date or actual filing



Maintain a contemporaneous TP documentation



Collate documents to support RPT

- Certified true copy of the relevant contracts or proof of transaction
- Withholding tax returns and the corresponding proof of payment of taxes withheld and remitted to the BIR;
- Proof of payment of foreign taxes or ruling duly issued by the foreign tax authority where the other party is a resident;
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Accomplish TP audit forms ahead of time in order to be adequately prepared during a TP audit

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Taxpayer To Do's

<input checked="" type="checkbox"/>	Check if the taxpayer will meet the criteria and revenue thresholds provided under RR No. 34-2020.	
<input checked="" type="checkbox"/>	Accomplish BIR Form No. 1709 <i>if applicable</i>	Submission Deadline: 15 days from statutory due date or actual filing
<input checked="" type="checkbox"/>	Maintain a contemporaneous TP documentation	
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Taxpayer To Do's



Check if the taxpayer will meet the criteria and revenue thresholds provided under RR No. 34-2020.



Accomplish BIR Form No. 1709 *if applicable*

Submission Deadline: 15 days from statutory due date or actual filing



Maintain a contemporaneous TP documentation



Collate documents to support RPT

- Certified true copy of the relevant contracts or proof of transaction
- Withholding tax returns and the corresponding proof of payment of taxes withheld and remitted to the BIR;
- Proof of payment of foreign taxes or ruling duly issued by the foreign tax authority where the other party is a resident;
- Certified true copy of Advance Pricing Agreement (“APA”), if any






Submission Deadline: 30 calendar days from receipt of LOA



Accomplish TP audit forms ahead of time in order to be adequately prepared during a TP audit

Submission Deadline: 5 working days from receipt of notice

Taxpayer To Do's

	Check if the taxpayer will meet the criteria and revenue thresholds provided under RR No. 34-2020.	
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What are the consequences of noncompliance?

RR 2-13

Failure to maintain TPD - **PHP 50,000**

RR 19-20

Failure to make, file, or submit certain Information Returns
Failure to supply correct and accurate Information Returns

PHP 1,000 for each failure, maximum of PHP 25,000 per calendar year

Penalty for subsequent offenses

Maximum of PHP 25,000

Failure to Obey Summons

PHP 5,000 to PHP 10,000 and imprisonment of 1 to 2 years



In addition, taxpayers may also be held liable for ***deficiency taxes*** (including surcharges and interest) resulting from transfer pricing adjustments during the BIR's tax audit.

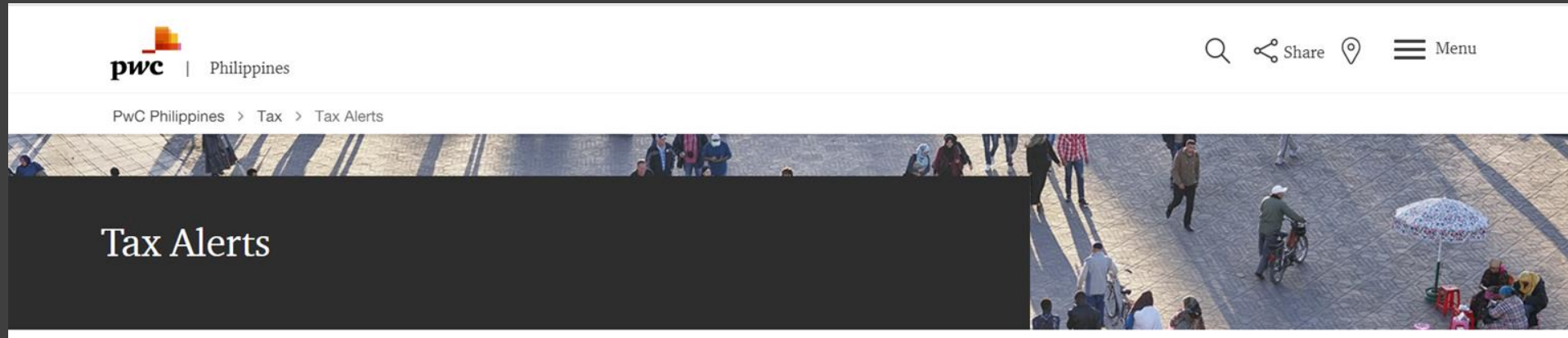
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Thank you!

Transfer Pricing Related Issuances

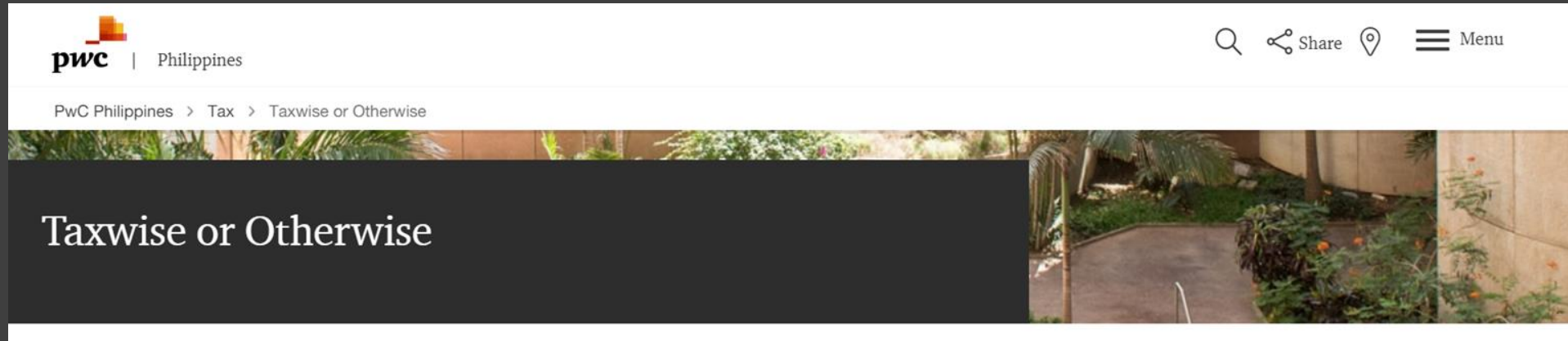
1	RMO 41-92	Information Return on Transactions with Related Foreign Persons	18 November 1992 effective 1 January 1993
2	RAMO 1-98	Audit Guidelines and Procedures in the Examination of Interrelated Group of Companies	7 July 1998
3	RMO 63-99	Determination of Taxable Income on Inter-company Loans or Advances	13 August 1999
4	RMC 26-08	Interim Transfer Pricing Guidelines	24 March 2008
5	RR 2-13	Transfer Pricing Guidelines	23 January 2013 effective 15 days from 25 January 2013
6	RAMO 1-2019	Transfer Pricing Audit Guidelines	20 August 2019 effective immediately
7	RR 19-20 Form 1709	Information Return on Transactions with Related Party	8 July 2020 effective 15 days from 10 July 2020
8	RMC 76-20	Clarifies Certain Issues on the Filing of BIR Form No.1709 and its Attachments	29 July 2020
9	RMC 98-20	Extended Submission of BIR Form No. 1709 and its Attachments	15 September 2020
10	RMC 34-20	Guidelines and Procedures for the Submission of BIR Form No. 1709, Transfer Pricing Documentation, and other Supporting Documents	22 December 2020

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<https://www.pwc.com/ph/en/taxwise-or-otherwise.html>

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