

Philippines clarifies certain issues related to filing of transfer pricing information return

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Executive summary

The Philippine Bureau of Internal Revenue (BIR) issued Revenue Memorandum Circular No. 76-2020¹ (Circular) clarifying certain issues related to the filing of BIR Form No. 1709, the *Related Party Transactions Form* (RPT Form) and its attachments, as provided in Revenue Regulations (RR) No. 19-2020.

This Tax Alert summarizes the key issues addressed by the Circular.

Detailed discussion

The key highlights of the Circular are summarized below:

Objective, covered taxpayers, and first implementation period

- ▶ The RPT Form enables the BIR to perform a transfer pricing risk assessment and focus its audit on the most important transfer pricing issues. The RPT Form will also be used to monitor the taxpayer's compliance with the transfer pricing documentation (TPD) requirements and to enforce the exchange of information between tax treaty partners for verification purposes.
- ▶ The RPT Form is required to be completed by Philippine taxpayers with RPTs, regardless of the amount and volume of transactions, including non-stock non-profit corporations. Individuals who are considered related parties of the reporting entity are also required to submit the RPT Form with their annual individual income tax return.

- ▶ The RPT Form is required to be submitted as an attachment to the Annual Income Tax Return (AITR) commencing with the fiscal year (FY) ending 31 March 2020, whether a tentative filing or otherwise. For taxpayers with FYs ending 31 March 2020 and 30 April 2020, the deadline to prepare and submit the RPT Form and its required attachments has been extended to 29 December 2020.²
- ▶ Formal written agreements/contracts for cost-sharing arrangements are required to be submitted to prove that they are for legitimate expenses, in addition to documents (e.g., receipts, proof of payment) needed to substantiate the expenses.
- ▶ All contracts executed by the parties to substantiate the RPT in the covered taxable year, regardless of volume, are required to be attached. Electronic copies may be submitted under certain conditions. Contracts executed in the previous year but still enforceable and applicable to the RPTs in the covered taxable year, are also required to be attached.

Transfer pricing documentation

- ▶ All taxpayers with RPTs, regardless of the amount and volume, are required to attach TPD, local or otherwise, with the TPD indicating the date of its creation or preparation.
 - The TPD must be the documentation upon which the taxpayers relied to determine the transfer pricing prior to or at the time of undertaking the RPTs and must have been prepared no later than the filing due date of the tax return for the taxable year in which the transactions took place.
 - The TPD is not required to be updated annually if there are no significant changes in the business model, the factors, or conditions considered in drafting the TPD, and the nature of the RPT. In such a case, the prior TPD can be relied upon and filed with the RPT Form.
 - If the parent company has TPD, which covers the transactions with subsidiaries, the subsidiaries can use such TPD if relied upon in determining transfer prices. However, in this situation, the local file is preferred as it provides more detailed information relating to specific intercompany transactions.
 - The TPD for the immediately preceding year may apply to subsequent RPTs if the following conditions are met:
 - ▶ The transaction covered by the past TPD is of the same type and undertaken with the same related party.
 - ▶ The taxpayer can prove that the same conditions apply, such as but not limited to: (a) the relationship between the taxpayer and its related party; (b) conditions made or imposed between the parties; (c) transfer pricing method/s used in the transaction; and d) arm's-length conditions.
- ▶ Any taxes paid to a foreign country by a Philippine taxpayer must be declared, and the proof of payment attached to the RPT Form. The document evidencing the payment of foreign taxes or a copy of foreign ruling issued by the relevant foreign tax authority must be authenticated or apostilled.
 - If the taxpayer earned income from its related party in a foreign country but has yet to pay the tax on such income after the filing of the RPT Form, the taxpayer is required to declare the income earned in the RPT Form and indicate that no tax has been paid in the disclosure for withholding taxes.
 - If the taxpayer paid the corresponding tax after the filing of the RPT Form, the taxpayer must inform the tax examiner during an audit and present the proof of tax payment.
- ▶ Tax Treaty Relief Applications are required to be indicated in the RPT Form and must be consistent with filings made to the BIR International Tax Affairs Division in respect of income payments made by the Philippine taxpayer to its related party(ies).
- ▶ The Bank Secrecy Law cannot be used as legal basis to not submit the required documents.

Other covered RPTs and supporting documents

- ▶ The Circular clarifies that payments of dividends and the redemption of shares between and among related parties (either paid or payable, received or receivable), though not usually covered by TPD, should be disclosed in the RPT Form and supported with prescribed documents as proof of the dividend payment.

Implications

As the information disclosed in the RPT Form will be used for transfer pricing risk assessments, audits and the exchange of information, Philippine companies with RPTs should review their transfer pricing positions to ensure that their RPTs are: (i) within the arm's-length range; (ii) supported by contemporaneously prepared TPD and relevant documents; and (iii) properly disclosed in the annual RPT Form.

Endnotes

1. Issued on 29 July 2020. Full text of Revenue Regulations No. 19-2020 and its Annex (BIR Form No. 1709) are available on the [BIR website](#).
2. The original deadline was 30 September 2020. RMC No. 98-2020 issued on 14 September 2020 has extended the deadline for the submission of BIR Form No. 1709, based on the taxpayer's fiscal year end:

AITR for Fiscal Years Ending:	Extended Deadline
31 March 2020 and 30 April 2020	29 December 2020
31 May 2020 and 30 June 2020	31 January 2021
31 July 2020 and 31 August 2020	1 March 2021
30 September 2020 and 31 October 2020	31 March 2021
30 November 2020 and 31 December 2020	30 April 2021*
	* The extended deadline indicated under RMC 98-2020 is 30 April 2020. We believe that the intention of the BIR is to extend the deadline to 30 April 2021.

For additional information with respect to this Alert, please contact the following:

Ernst & Young Philippines (SGV & Co.), Makati City

- ▶ Fabian K. Delos Santos fabian.k.delos.santos@ph.ey.com
- ▶ Romulo S. Danao romulo.danao@ph.ey.com
- ▶ Reynante M. Marcelo reynante.m.marcelo@ph.ey.com
- ▶ Deonah L. Marco-Go deonah.l.marco-go@ph.ey.com

Ernst & Young LLP (United States), Philippines Tax Desk, New York

- ▶ Michelle C. Arias michelle.arias@ey.com

Ernst & Young LLP (United States), Asia Pacific Business Group, New York

- ▶ Chris J. Finnerty chris.finnerty1@ey.com
- ▶ Bee Khun Yap bee-khun.yap@ey.com

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