REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

13 March 2023

REVENUE MEMORANDUM CIRCULAR No. 35-2023

SUBJECT: **Clarifying the Application of the Eighteen (18)-Month Transitory Period in Republic Act (RA) No. 11900, as reiterated in its Implementing Rules and Regulations (IRR) and Revenue Regulations (RR) No. 14-2022**

TO : All Revenue Officers, Employees and Others Concerned

This Circular is being issued to clarify the application of the eighteen (18)-month transitory period in Republic Act (RA) No. 11900, or the "*Vaporized Nicotine and Non-Nicotine Product Regulation Act*", as reiterated in its Implementing Rules and Regulations (IRR) and Revenue Regulations (RR) No. 14-2022, in order for the manufacturers, distributors, importers and retailers of Vaporized Nicotine and Non-Nicotine Products or their devices, and Novel Tobacco Products to comply with the requirements set forth therein.

I. Background:

RA No. 11900 regulates the importation, assembly, manufacture, sale, packaging distribution, use, advertisement, promotion and sponsorship of Vaporized Nicotine and Non-Nicotine Products, and their devices, and Novel Tobacco Products. It lapsed into law on 25 July 2022.

Section 24 of the law provides that the Department of Trade and Industry (DTI), in consultation with the Food and Drug Administration (FDA), shall issue its necessary IRR. Section 27 also provides that the manufacturers, distributors, importers and retailers of Vaporized Nicotine and Non-Nicotine Products, and their devices, and Novel Tobacco Products shall be given an **eighteen (18)-month transitory period from the issuance of the IRR** to comply with its requirements.

On 24 October 2022, Revenue Regulations (RR) No. 14-2022 was issued. It implements the provisions of RA No. 11900 by providing, among others, the (*i*) tax rate and base of excise tax on Novel Tobacco Products; (*ii*) registration of the business as manufacturer or importer of Vaporized Nicotine and Non-Nicotine Products and Novel Tobacco Products, including registration of online sellers or distributors; and, (*iii*) registration of brand and variants of Vaporized Nicotine and Non-Nicotine Products and Novel Tobacco Products. Section 9 thereof states that the manufacturers, importers, distributors and retailers of Novel Tobacco Products shall be given an **18-month transitory period from the issuance of IRR** to comply with its requirements.

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On 5 December 2022, the DTI issued the IRR of RA No. 11900. The IRR was published in the newspapers of general circulation on 13 December 2022. It provides for the requirements pursuant to RA No. 11900 to be followed and observed by the manufacturers, distributors, importers and retailers of Vaporized Nicotine and Non-Nicotine Products or their devices, and Novel Tobacco Products.

II. Clarification:

The Bureau has been receiving reports that some taxpayers are using as an excuse the (18)-month transitory period in the law to delay compliance with the requirements set forth in RA No. 11900, as reiterated in its IRR and RR No. 14-2022. Let it be clarified that the (18)-month transitory period applies only to the requirements of Product Standards and Product Registration. The rest of the executory provisions of the law, or the other requirements, are **effective immediately**. This is the clear tenor of Section 2, Rule XVII of the IRR, thus:

> "**Section 2. Transitory Provision**. Manufacturers, distributors, importers and retailers of Vaporized Nicotine and Non-Nicotine Products or their devices, and Novel Tobacco Products shall be given an eighteen (18)-month transitory period from the issuance of this IRR to comply with the requirements of **product standards and product registration**. **The rest of the executory provisions are effective immediately**." (underlining supplied).

The requirements of Product Standards and Product Registration referred to herein are found in Rules X and XI of the IRR, which read:

> **"Rule X**
> **Product Standard Requirements**
>
> The BPS[1], in consultation with the FDA, shall set the product standards for the safety, consistency, and quality of the covered products requiring registration under Rule 1 Section 3 of this IRR;[2] *Provided*, that vapor product with nicotine content shall not exceed sixty-five milligrams per milliliter (65mg/ml). Compliance with the product standards shall be mandatory.
>
> The BPS shall issue separate technical regulations for the covered products.
>
> **Rule XI**
> **Product Registration**
>
> All manufacturers and importers of the covered products shall apply for product registration and certification with the BPS by submitting information demonstrating conformity with the technical regulations set by the office.

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[1] Bureau of Philippine Standards

[2] These are: (1) Vapor Products or Vapor Product Refills; (2) Vapor Product Devices; (3) HTP Consumables; (4) HTP Devices; and, (50 Novel Tobacco Products.

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Only BPS registered and certified Vaporized Nicotine and Non-Nicotine Products, their devices, and Novel Tobacco Products with the applicable graphic health warning may be sold to the general public."

Therefore, the requirements set forth in RA No. 11900, its IRR and RR No. 14-2022 other than Products Standards and Product Registration shall be **effective immediately**. Among those important requirements are:

(1) **Registration with the BIR** of the business as manufacturer or importer of Vaporized Nicotine and Non-Nicotine Products and Novel Tobacco Products, including registration of online sellers or distributors (RR No. 14-2022);

(2) **Registration with the BIR** of brand and variants of Vaporized Nicotine and Non-Nicotine Products and Novel Tobacco Products (RR No. 14-2022);

(3) E-marketplaces, e-commerce platforms, selling facilities embedded in social media websites/applications, and/or other similar platforms shall only allow DTI and **BIR duly registered distributors, merchants or retailers** of Vaporized Nicotine and Non-Nicotine Products, their devices, and Novel Tobacco Products to sell in their website or platform (IRR);

(4) For duly-registered distributors, merchants and retailers of Vaporized Nicotine and Non-Nicotine Products, their devices, and Novel Tobacco Products selling on their own websites and/or selling platforms, the required government certificates and approval shall be **posted conspicuously at the landing page of their websites and/or selling platforms** (IRR); and,

(5) Duly-registered distributors, merchants or retailers of Vaporized Nicotine and Non-Nicotine Products, their devices, and Novel Tobacco Products **shall conspicuously post in their brick-and-mortar stores the required government certificates and approvals of the products** (IRR).

Non-compliance with the aforesaid requirements and the rest of the requirements in RA No. 11900, its IRR and RR No. 14-2022 shall warrant the imposition of corresponding penalties prescribed therein.

All internal revenue officers, employees and others concerned as enjoined to give this Circular the widest dissemination and publicity as possible.

This Circular shall take effect immediately.

ROMEO D. LUMAGUI, JR.
Commissioner of Internal Revenue
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