REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
**BUREAU OF INTERNAL REVENUE**

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April 25, 2023

**REVENUE MEMORANDUM CIRCULAR NO. 49-2023**

**SUBJECT :** **Updating the Floor Price of Cigarettes, Heated Tobacco, Vaporized Nicotine and Non-Nicotine Products and Reiterating the Imposition of Corresponding Penalties, Sanctions and Liabilities for Noncompliance Therewith**

**TO :** All Internal Revenue Officers, Employees, and Others Concerned

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## I. BACKGROUND

This Circular is being issued to update the Floor Price of Cigarettes, Heated Tobacco, Vaporized Nicotine and Non-Nicotine Products as set forth in Section 6 of Revenue Regulations (RR) No. 14-2022 and Revenue Memorandum Circular (RMC) No. 79-2022, in relation to RR No. 7-2021.

Pursuant to Sections 144 (B) and (C), and 145 (B) of the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act (RA) Nos. 11346, 11467, and the provisions of RA No. 11900, which mandate the Bureau of Internal Revenue to prescribe the floor price of Cigarettes, Heated Tobacco, Vaporized Nicotine and Non-Nicotine Products.

## II. FLOOR PRICE OR MINIMUM PRICE

Floor Price is defined as the minimum retail price set by the BIR at which Cigarettes, Heated Tobacco, Vaporized Nicotine and Non-Nicotine Products may be sold, taking into account the sum of their excise tax, value-added tax, and reasonable production cost. Provided hereunder is the updated floor price for the following tobacco products:

### A. Cigarettes

| Packaging | Content per Packaging | Production Cost/ Total Landed Cost | Excise Tax | VAT | Total Tax | Floor Price |
|---|---|---|---|---|---|---|
| Pack | 20 sticks | ₱ 42.32 | ₱ 60.00 | ₱ 12.28 | ₱ 72.28 | ₱ 114.60 |
| Ream | 10 packs | ₱ 423.20 | ₱ 600.00 | ₱ 122.80 | ₱ 722.80 | ₱ 1,146.00 |

### B. Heated Tobacco Products

| Packaging | Content per Packaging | Production Cost/ Total Landed Cost | Excise Tax | VAT | Total Tax | Floor Price |
|---|---|---|---|---|---|---|
| Pack | 20 sticks | ₱ 75.00 | ₱ 32.50 | ₱ 12.90 | ₱ 45.40 | ₱ 120.40 |

### C. Vapor Products

#### C.1 Nicotine Salt or Salt Nicotine

| Packaging | Pack/ Fill | Content per Packaging | Production Cost/ Total Landed Cost | Excise Tax | VAT | Total Tax | Floor Price |
|---|---|---|---|---|---|---|---|
| Pod | 1 | 2ml | ₱ 74.57 | ₱ 104.00 | ₱ 21.43 | ₱ 125.43 | ₱ 200.00 |
| Pod | 1 | 4ml | ₱ 108.94 | ₱ 208.00 | ₱ 38.03 | ₱ 246.03 | ₱ 354.97 |

**C.2 Conventional 'Freebase' or 'Classic' Nicotine**

| Packaging | Pack/ Fill | Content per Packaging | Production Cost/ Total Landed Cost | Excise Tax | VAT | Total Tax | Floor Price |
|---|---|---|---|---|---|---|---|
| Bottle | 1 | 10ml | ₱ 100.00 | ₱ 60.00 | ₱ 19.20 | ₱ 79.20 | ₱ 179.20 |
| Bottle | 1 | 30ml | ₱ 180.00 | ₱ 180.00 | ₱ 43.20 | ₱ 223.20 | ₱ 403.20 |

Selling of tobacco products at a price lower than the combined excise and value-added taxes imposed under the law shall be prohibited. The **seller** of such products shall be punished with the corresponding fine under the pertinent provisions of the 1997 NIRC, as amended.

**"Seller"** is defined under **Republic Act No. 7394**, otherwise known as the **"Consumer Act of the Philippines,"** as follows:

> *"...a person engaged in the business of selling consumer products directly to consumers. It shall include a supplier or distributor if (1) the seller is a subsidiary or affiliate of the supplier or distributor; (2) the seller interchanges personnel or maintains common or overlapping officers or directors with the supplier or distributor; or (3) the supplier or distributor provides or exercises supervision, direction or control over the selling practices of the seller."*

Section 4 of the **Joint Administrative Order (JAO) No. 22-01, Series of 2022**, issued by the Department of Trade and Industry in collaboration with other relevant government agencies, defines the following terms:

(i) **"Seller"** includes online seller or merchant, which the JAO defines as "an organization or retailer selling products or services to customers through an e-marketplace."

(ii) **E-marketplace** "refers to an online intermediary that allows participating merchants to exchange information about products or services to enter into an electronic commerce transaction, which may or may not provide information/services about payments and logistics."

(iii) **E-commerce platform** "refers to a natural or juridical person that solicits or facilitates the purchase, procurement, or use of goods and services, with the presence and use of monetary transactions, including using, developing, creating, or promoting digital content through digital platforms, websites, and marketplaces, with functions which connects and encourages consumers, online merchants, sellers, and retailers to enter into commercial transactions."

The same JAO expressly states: "E-Commerce platforms, e-marketplaces, and the like, shall verify if the goods sold by online sellers or merchants, and e-retailers, in their respective platforms are regulated, prohibited, original, genuine, licensed, or unexpired."

## III. PENALTIES

Any violation of the floor prices prescribed above shall be subject to the corresponding penalties under the pertinent provisions of the 1997 NIRC, as amended, to wit:

(i) *"**SEC. 145. Cigars and Cigarettes**. - xxx*
*"Selling of tobacco products at a price lower than the combined excise and value-added taxes imposed under the law shall be prohibited. The seller of such products*

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*shall be punished with a fine of not less than ten (10) times the amount of excise plus value-added taxes due but not less than Two hundred thousand pesos (₱200,000.00) nor more than Five hundred thousand pesos (500,000.00), and imprisonment of not less than four (4) years but not more than six (6) years."*

(ii) *"**SEC. 254. Attempt to Evade or Defeat Tax.** - Any person who willfully attempts in any manner to evade or defeat any tax imposed under this Code or the payment thereof shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine not less than Five hundred thousand pesos (P500,000) but not more than Ten million pesos (P10,000,000) and suffer imprisonment of not less than six (6) years but not more than Ten (10) years: Provided, That the conviction or acquittal obtained under this Section shall not be a bar to the filing of a civil suit for the collection of taxes."*

(iii) *"**Sec. 263-A. Selling of Heated Tobacco Products and Vapor Products at a Lower Price than the Combined Excise and Value-added Taxes.** – Any person who sells heated tobacco products and vapor products at a price lower than the combined excise and value-added taxes shall be punished with a fine of ten (10) times the amount of excise tax plus value-added tax but not less than One hundred thousand pesos (P100,000.00), and imprisonment of not less than two (2) years but not more than four (4) years."*

In addition to the above penalties, the provisions of Sections 263 and 265 of the 1997 NIRC, as amended, shall likewise be applied.

Furthermore, **Sec. 13** of **JAO No. 22-01, Series of 2022,** provides: "E-Commerce platforms, e-marketplaces, and the like, shall be treated, and shall be held liable, in the same manner as online sellers, merchants, and e-retailers, when the latter commits any violation of the laws implemented by these rules."

## IV. EFFECTIVITY

All concerned are hereby enjoined to be guided accordingly and give this Circular as wide a publicity as possible.

This Circular shall take effect immediately.

**ROMEO D. LUMAGUI, JR.**
Commissioner of Internal Revenue

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**D-6/LTS-Excise**

