REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

April 27, 2021

REVENUE MEMORANDUM CIRCULAR NO. 54-2021

Subject: **Clarifies Certain Provisions of Revenue Regulations (RR) No. 34-2020**

To: **All Revenue Officers, Employees and Others Concerned**

This circular is issued to address the frequently asked questions regarding the submission of BIR Form No. 1709 (RPT Form), and the preparation of Transfer Pricing Documentation (TPD) following the amendment of RR No. 19-2020 by RR No. 34-2020.

Q1: Who are required to accomplish and file an RPT Form?

A taxpayer is required to file an RPT Form if the following conditions are present:

1. it is required to file an Annual Income Tax Return (AITR);
2. it has transactions with a domestic or foreign related party during the concerned taxable period; *and*
3. it falls under **any** of the following categories:
   a) large taxpayers
   b) taxpayers enjoying tax incentives, i.e. Board of Investments (BOI)-registered and economic zone enterprises, those enjoying Income Tax Holiday (ITH) or subject to preferential income tax rate
   c) taxpayers reporting net operating losses for the current taxable year and the immediately preceding two (2) consecutive taxable years
   d) a related party that has transactions with (a), (b) or (c).

Q2: Who is a large taxpayer?

Under RR No. 1-1998, a large taxpayer is a taxpayer who has been **classified and duly notified** by the Commissioner of Internal Revenue (CIR) for having satisfied any or a combination of set criteria as prescribed in the said Regulations or any amendatory regulations. Notification may be made via registered mail, publication, or any other mode of service.

Therefore, a taxpayer who meets any of the set criteria but was not notified by the CIR cannot be considered a large taxpayer.

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Q3: Who are the taxpayers subject to preferential income tax rate?

In determining whether a taxpayer is subject to preferential income tax rate, reference must be made to the provisions of the Tax Code or other special laws on how these taxpayers are taxed as a whole and not on a per transaction basis. Hence, a corporate taxpayer that is subject to regular corporate income tax but has transactions that are subject to preferential income tax rate under tax treaties or the Tax Code are not required to file an RPT Form, provided further that they do not fall under Section 2(a), (c) and (d).

Taxpayers referred to under Section 2(b) of RR No. 34-2020 include, but are not limited to, the following:

1. proprietary educational institutions and hospitals; and
2. regional operating headquarters.

International carriers, though subject to preferential rate under Section 28(A)(3) of the Tax Code or under the relevant tax treaty, are not required to file an RPT Form if they are either subject to tax based on their Gross Philippine Billings or gross revenues. The same rule applies to international carriers that are exempt from tax under the tax treaty or on the basis of reciprocity.

On the other hand, international carriers that are subject to tax on their profits from sources within the Philippines are required to file an RPT Form.

Q4: If the taxpayer operating within the economic zone is subject to regular corporate income tax, is it required to file an RPT Form?

No, because only those enjoying tax incentives with respect to income tax (i.e., Income Tax Holiday or 5% Special Tax on Gross Income) are required to file an RPT Form. However, if the taxpayer falls under Section 2(a), 2(c) or 2(d) of RR No. 34-2020, then it is required to file an RPT Form.

Q5: Is a tax-exempt corporation required to file an RPT Form? How about a post-employment benefit plan?

Taxpayers who are exempt from income tax under Section 30 or similar provisions of the Tax Code or special laws are not required to file an RPT Form.

Also included in the classification of tax-exempt taxpayers are the regional or area headquarters and representative offices of foreign corporations that are not allowed by law to derive income from the Philippines.

Post-employment benefit plans are also not required to file an RPT Form if their related party transactions consist only of the contributions from their sponsor employers.

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Illustration No. 1:

A Co., an exempt corporation, had transactions with its related party B Co., a large taxpayer. Is A Co. required to file an RPT Form?

A taxpayer exempt from the payment of income tax is **not** required to file an RPT Form regardless of whether such taxpayer had dealings with a related party that falls under Section 2(a), (b) or (c).

Illustration No. 2:

Suppose A Co. is an ordinary corporation, is it required to file an RPT Form?

Yes. Section 2(d) of RR No. 34-2020 requires related parties that has transactions with a related party falling under Section 2(a) to (c), i.e., a large taxpayer, or a taxpayer enjoying tax incentives, or has reported net operating losses for the current taxable year and the immediately preceding two (2) consecutive taxable years, to file an RPT Form. It is imperative upon A Co. to check whether its related parties fall under the foregoing enumeration.

Illustration No. 3:

A Co. a large taxpayer, has several subsidiaries in the Philippines. All of them set up their respective post-employment benefit plans for the benefit of their employees. These retirement plans are duly registered with the BIR and as such, they regularly file their AITR. However, the only related party transactions disclosed in the AFS of these benefit plans are the contributions from the sponsor employers. Are these benefit plans required to file an RPT Form?

No, they are not required to file an RPT Form. Moreover, A Co. and its subsidiaries need not include in the RPT Form their contributions to these benefit plans.

Q6: What does the term "net operating losses" mean? Should it be based on the Audited Financial Statements (AFS) or AITR?

The net operating losses for income tax purposes should be the basis and not the amount reflected in the AFS.

Under Section 34(D)(3) of the Tax Code, the term "net operating loss" means the excess of allowable deductions over the gross income of the business in a taxable year. Allowable deductions refer to the ordinary and necessary expenses paid or incurred during the taxable year in carrying on or which are directly attributable to, the development, management, operation and/or conduct of the trade, business or exercise of a profession.

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Q7. Should BIR registration fees, business permit, and real estate taxes paid for ordinary assets be considered in determining net operating losses?

Registration fees, business permits and licenses and taxes, except those enumerated under Section 34(C)(1) of the Tax Code, are allowable deductions, and should therefore be considered in computing net operating losses.

Q8. If a domestic party had transactions with a nonresident foreign related party that reported net operating losses for the current taxable year and the last two immediately preceding taxable years, is the former required to file an RPT Form?

Since the nonresident foreign related party is not required to file an RPT Form, the domestic party is likewise not required to file an RPT Form.

To determine whether a taxpayer is required to file an RPT Form pursuant to Section 2(d) of RR No. 34-2020, the transacting taxpayer must verify first if its related party is required to file an RPT Form for falling under categories a to c. Again, the conditions enumerated in Question No. 1 should be present.

Q9. Is there a materiality threshold for reportable related party transactions?

The materiality threshold is only relevant in determining who are required to prepare a TPD. A taxpayer who is required to file an RPT Form must disclose all related party transactions irrespective of the amount.

Q10. In filling out the RPT Form, would it be possible to report a lump-sum amount and not on a per transaction basis?

If possible, similar transactions with the same related party must be aggregated.

Illustration No. 4:

On several occasions in 2020, A Co., a domestic manufacturing company, sold to B Co., its subsidiary, raw materials amounting to 1,000,000 per transaction or 20,000,000 in the aggregate. In addition, A Co. likewise provided monthly support services to B Co. to assist it in marketing its products in exchange for a monthly service fee of 500,000.

In this case, A Co. need not report the sale of goods and services individually. He may report the same as sale of goods for 20,000,000 and sale of services for 6,000,000.

Q11. What do we have to attach when filing the RPT Form?

The last paragraph of RR No. 34-2020 states that the TPD and other supporting documents shall no longer be attached to the RPT Form but shall instead be made available during audit.

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Q12. Is a reasonable estimate of the related party transactions sufficient?

No less than the actual amounts of the related party transactions shall be declared in the RPT Form. Just like any other tax returns, the RPT Form likewise contains a perjury clause whereby the taxpayer or its duly authorized representative attests to the truthfulness of the facts stated therein.

Q13: The short period return was supposed to be filed on December 15, 2020 but the filing thereof was extended by law or revenue issuances until January 31, 2021. Should the RPT Form accompany such short period return?

No. The filing of RPT Form shall only be mandatory for short period returns that are originally required by law or existing revenue issuances to be filed in 2021 and subsequent years.

Q14. Suppose A Co. is not required to file the RPT but has satisfied the materiality thresholds under Section 3 of RR No. 34-2020. Is it required to prepare a TPD?

Sections 2 and 3 of RR No. 34-2020 are interrelated. Section 2 enumerates the taxpayers who are required to file the RPT Form while Section 3 provides the conditions to be met by these taxpayers before they may be obliged to prepare a TPD.

The enumeration under Section 2 is exclusive such that all taxpayers not included therein are not required to file the RPT Form. A taxpayer who is required under Section 2 to file the RPT Form shall only prepare its TPD if it satisfies any of the conditions set out under Section 3. If the taxpayer is not required to file the RPT Form then it is not also mandated to prepare a TPD.

Nothing prevents any taxpayer, however, from preparing a TPD and presenting the same during audit to prove that its related party transactions were conducted at arm's length. Though not required to prepare a TPD under RR No. 34-2020, it still needs to reasonably assess and prove whether its dealings with related parties adhere to the arm's length principle. After all, the burden of proof rests upon the taxpayer.

Q15. Who are required to prepare a TPD?

The preparation of a TPD shall be mandatory if the taxpayer meets **any** of the following conditions:

(a) annual gross sales/revenue for the subject taxable period exceeding One Hundred Fifty Million Pesos (₱150,000,000) **and** the total amount of related party transactions with foreign and domestic related parties exceeds Ninety Million Pesos (₱90,000,000)
(b) sale of tangible goods involving **the same related party** exceeding Sixty Million Pesos (₱60,000,000) within the taxable year
(c) service transaction, payment of interest, utilization of intangible goods or other related party transaction involving **the same related party** exceeding Fifteen Million Pesos (₱15,000,000.00) within the taxable year

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(d) if TPD was required to be prepared during the immediately preceding taxable period for exceeding (a) to (c).

Q16: What is the difference between the related party transactions under Section 3(a) and (b) of RR No. 34-2020?

The related party transactions under Section 3(a) refer to transactions involving all related parties in general, while those under Section 3(b) relate to transactions with a specific related party only.

Q17: Does the term "annual gross sales/revenue" pertain to the combined revenue from related party and third-party transactions?

Yes, the annual gross sales or revenue referred to under Section 3(a) of RR No. 34-2020 is the amount of gross sales/receipts/revenues/fees reported in the AITR, irrespective of the source and identity of the other party to the transaction, *i.e.*, related or otherwise.

Q18: In computing the volume of related party transactions, does the taxpayer have to sum up the amounts received or paid with the outstanding receivable/payable? Should this be read as amounts that hit the income statement in addition to outstanding balances?

In computing the total amount of related party transactions with foreign and domestic related parties, the following items shall be totalled:

i. amounts received and/or receivable (trade receivables) from related parties during the taxable year;
ii. amounts paid and/or payable (trade payables) to related parties during the taxable year; and
iii. outstanding balances of loans and non-trade amounts due from/to all related parties (non-trade receivables and payables).

Any compensation paid to key management personnel, dividends and branch profit remittances shall not be included in the computation.

Q19: What are included in the phrase "other related party transaction"?

The intention of RR No. 34-2020 is to include in such term all other related party transactions not specifically enumerated in Section 3(b) of RR No. 34-2020.

Q20: Should share in the net income from associates or joint ventures be disclosed in the RPT Form?

Share in the net income of an associate, etc. is akin to dividends. Therefore, it is not required to be reported in the RPT Form.

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Illustration No. 5:

X Co., a large taxpayer, had an annual sale of ₱1 billion in 2020. In December of the same year, X Co. sold ₱10 million worth of raw materials to Z Co., a related party. Is X Co. required to prepare a TPD?

No. Section 3(a) states that the taxpayer should at least have an annual sales of ₱150 million **and** related party transactions of ₱90 million. Moreover, Section 3(b) thereof requires that sale of tangible goods to a related party within the year should exceed ₱60 million.

Illustration No. 6:

Suppose ABC Co., a taxpayer enjoying Income Tax Holiday, is required to prepare a TPD for breaching the annual gross sales of ₱200 million and related party transactions of ₱500 million in 2020. In 2021, its annual sales and related party transactions only amounted to 60 million and ₱5 million, respectively. Is ABC Co. required to prepare a TPD for its 2021 related party transactions?

Yes. Section 3(c) states that if a TPD was required to be prepared during the immediately preceding taxable period for exceeding the thresholds under Section 3(a) or (b) of RR No. 34-2020, the taxpayer is also mandated to prepare a TPD for the current taxable year. In this example, ABC Co. was required to prepare a TPD for its 2020 related party transactions for meeting the materiality threshold under Section 3(a). Hence, it shall also prepare a TPD for its 2021 related party transactions despite not meeting any of the materiality thresholds.

Illustration No. 7:

Assume ABC Co.'s total sales in 2022 only amounts to ₱100 million. Its related party transactions consist of the following:

- Sale of finished products to DEF Co., its subsidiary – ₱50 million
- Payment of interest to X Co., another subsidiary – ₱10 million
- Payment of royalties to X Co. – ₱3 million
- Sale of intangible goods to X Co. – ₱2 million

Is ABC Co. required to prepare a TPD for its 2022 transactions?

No. ABC Co. is not required to prepare a TPD for its 2022 transactions for the following reasons:

a. its annual sales and related party transactions in 2022 did not exceed ₱150 million and ₱90 million, respectively. In fact, its related party transactions totalled ₱65 million only;
b. its sale of tangible goods to its related party DEF did not exceed ₱60 million;
c. its payment of interest and royalties and sale of tangible goods to its related party X Co. did not exceed ₱15 million; and

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d. lastly, ABC Co. was not required to prepare a TPD in 2021 for meeting any of the materiality thresholds.

Q21. What is the effect of failure to supply material information?

The Bureau requires the submission of a duly accomplished RPT Form. If the taxpayer fails to provide any material information (e.g. details of the related parties and related party transactions, etc.) the Bureau will regard the RPT Form as not duly filed and the penalty for failure to file such information return will be imposed.

Q22. What currency should be used in accomplishing the RPT Form and in preparing a TPD?

The RPT Form requires the amounts in foreign currency and its equivalent in the local currency. However, if several currencies were used for the related party transactions, and it seems impractical to indicate all of them in the RPT Form, their equivalent in the local currency should instead be disclosed.

In all cases, the exchange rates to be used should be the rate at the transaction date.

The same rule applies to the preparation of a TPD.

Q23: What are the incentives for taxpayers that complied with the requirements under RR No. 34-2020? Will they not be subjected to audit?

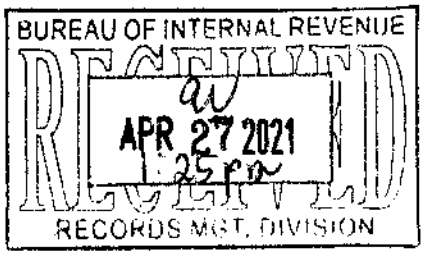
Through the RPT Forms submitted, the Bureau will conduct an initial transfer pricing risk assessment, identify the high-risk taxpayers and make an informed decision whether or not to conduct a transfer pricing audit of a particular entity or transaction. As to who will be subjected to transfer pricing audit will greatly depend on the results of such initial assessment.

This notwithstanding, the Bureau still retains the right to conduct transfer pricing audit against taxpayers with related party transactions, irrespective of whether or not they are required to file the RPT Form and prepare a TPD.

When subjected to audit, taxpayers who are not mandated to file the RPT Form and to prepare a TPD must still present sufficient evidence to prove that their related party transactions were conducted at arm's length.

Q24. In order for the related party transactions covered by an Advance Pricing Agreement (APA) to be exempt from disclosure in the RPT Form, does the APA need to be approved by the BIR?

Yes, the APA should be approved and accepted by the BIR. This may be in the form of a unilateral, bilateral or multilateral APA.



The BIR is not obliged to accept any unilateral APAs entered into by a foreign taxpayer and the tax authority of the country of residence although it applies to an international transaction between such foreign taxpayer and its related party in the Philippines.

Q25. Is the required disclosure under Section 4 of RR No. 34-2020 applicable to taxpayers who are not required to file an RPT Form and have already finalized their AFS for 2020 prior to its effectivity?

Taxpayers who are not required to file an RPT Form and have already finalized their AFS for taxable year 2020 prior to the effectivity of RR No. 34-2020 are not expected to comply with the mandate of Section 4 thereof and cannot, therefore, be penalized for non-disclosure.

Section 4 only applies to the AFS that are required to be submitted after the effectivity of RR No. 34-2020.

Q26. Does RR No. 34-2020 have a retroactive effect?

RR No. 34-2020 took effect immediately after its publication in a newspaper of general circulation on December 23, 2020. The provisions thereof shall only apply to the RPT Forms that are required to be submitted after its effectivity.

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

CAESAR R. DULAY
Commissioner of Internal Revenue

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