REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

JUL 29 2020

REVENUE MEMORANDUM CIRCULAR NO. 76-2020

Subject: **Clarifies Certain Issues on the Filing of BIR Form No. 1709, or the Related Party Transaction (RPT) Form, and its Attachments**

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, or the RPT Form, and its attachments pursuant to Revenue Regulations (RR) No. 19-2020.

Q1. What is the rationale for the issuance of Revenue Regulations (RR) No. 19-2020?

RR No. 19-2020 was issued to ensure that proper disclosures of related party transaction are made and that these transactions have been conducted at arm's length so as to protect the tax base. Ultimately, it is aimed at improving and strengthening the BIR's transfer pricing risk assessment and audit. With the information gathered in the RPT Form and its attachments, the BIR will be able to perform transfer pricing risk assessment and make an informed decision, at the early stage, whether or not to conduct a thorough review/audit of a particular entity or transaction. In this way, and given its limited resources, the BIR will be able to focus its audit and commit its resources only on the most important transfer pricing issues.

Q2. How is the BIR going to use the information contained in this new form? How will BIR operationalize RR No. 19-2020 and check the compliance of taxpayers? Will there be another RAMO for the guidance of revenue officers/tax examiners conducting transfer pricing audit?

As aforestated, the objective of this new form is to improve and strengthen BIR's transfer pricing risk assessment and audit. It shall be used to monitor compliance with the transfer pricing documentation (TPD).

In practice, the new form will give the BIR an initial assessment of the following:

1. Total gross amounts of related party transactions per relationship type (parent, entities with joint control or significant influence over the entity, subsidiaries, associates, joint ventures in which the entity is a joint venturer, key management personnel of the entity or its parent, other related parties);
2. The countries with whom the Philippine taxpayer has entered into related party transactions as well as the details about the foreign related party entity.

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Nonetheless, the BIR will still study and analyze the information in the form and TPD when selecting taxpayers to be subjected to tax investigation under its audit program, in addition to other information such as level of profitability and tax paid in the Philippines. The examiners are expected to conduct a more detailed transfer pricing analysis of individual transactions and prices based on a **functional analysis** taking into account the economically significant activities and responsibilities undertaken, assets used or contributed, and risks assumed by the parties to the transactions and **comparability analysis** between controlled and uncontrolled transactions.

As regards enforcement of international cooperation between treaty partners, through the exchange of information, with this new form, it will now be easier for the BIR to identify the countries to whom requests for information shall be sent for verification purposes.

Thus, the Bureau sees no reason at the moment to amend Revenue Audit Memorandum Order No. 1-2019.

Q3. Who will need to complete the new form?

The RPT Form is to be completed by Philippine taxpayers with related party transactions (RPTs) regardless of the amount and volume of transactions. Individuals who are considered related parties of a reporting company are also required to submit the RPT Form in their individual capacities.

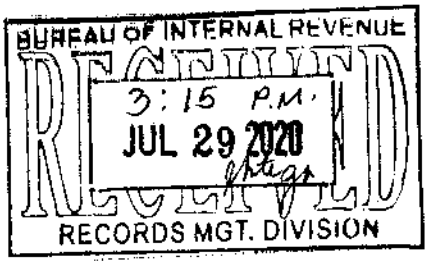
The related parties and related party transactions are set forth in Section 4 of RR No. 19-2020.

Q4. When is the reporting requirement effective? Is the RPT Form required to be attached to the tentative Annual Income Tax Returns (AITRs) covering calendar or fiscal year prior to the effectivity of RR No. 19-2020?

The RPT Form is required to be attached only to the AITR. Since the law took effect on 25 July 2020, the RPT Form is now required to be submitted as an attachment to the AITR for fiscal year ending March 31, 2020, tentative or otherwise, irrespective of the date of filing of the said AITR, and to all AITRs to be submitted after such date. In other words, taxpayers who manually filed their AITR and submitted the attachments for fiscal year ending March 31, 2020 prior to the effectivity of RR No. 19-2020 are still required to file and submit the RPT Form and its attachments. Take note that attachments to AITR for fiscal year ending March 31, 2020 are required by law to be submitted on or before July 30, 2020.

However, considering the unanticipated effectivity of RR No. 19-2020 five (5) days before the deadline set for the filing of the required attachments to the AITR for fiscal year ending 31 March 2020 and further considering the COVID-19 pandemic situation, the taxpayers are given another two (2) months from July 30, 2020, or until **September 30, 2020**, within which to prepare, file and submit the RPT Form and its required attachments.

AITRs for calendar year 2019 or for fiscal year ending before March 31, 2020 are not covered by RR No. 19-2020.



Q5. If there is an extension to submit the attachments, is there a need to fill out again and resubmit the return with the attachments or will a photocopy suffice?

There is no need to resubmit the AITR once it has been filed with the BIR. The taxpayer will only have to attach a photocopy of the duly filed AITR when submitting the RPT Form and its attachments.

Q6. What is the manner of filing of the RPT Form and its attachments?

Given the file size, the RPT Form and its attachments shall be manually filed unless there is another revenue issuance mandating their filing electronically.

Q7. When is the deadline for submission of RPT Form and its attachments?

For manual filers, the RPT Form and its required attachments must be submitted together with the AITR and other required attachments at the Large Taxpayers (LT) Division/Revenue District Office (RDO) where the taxpayer is registered, on or before the statutory due date.

For eFPS filers, the hard copy of RPT Form and its required attachments must be submitted manually and stamped "*Received*" at the LT Division/RDO where the taxpayer is registered, within fifteen (15) days from the statutory due date or actual date of electronic filing of the AITR, whichever comes later.

Q8. If the RPT Form will be accomplished and filed manually, are there printed copies of such Form available in the BIR offices that taxpayers can use?

The RPT Form is downloadable from the BIR website as BIR Form No. 1709.

As a proof that it was duly received by the BIR, the Form must bear the stamp of the office with the date of actual receipt thereon and the signature of the receiving officer.

Q9. If manually prepared, the spaces provided for on the form may be inadequate considering there are a number of related parties in a multinational company, how can this be accomplished?

As stated in the RPT Form, the taxpayer may use additional sheet/s if necessary. Alternatively, the taxpayer may transpose the form into an Excel format, print a copy thereof, and attach it - with appropriate marking as Annex "A", *etc.*, - as an integral part of the RPT Form. This attachment should be indicated in the appropriate column, for example, in Part II/III thereof, with the notation, "*see attached Annex "A"*.

Q10. Are all taxpayers with RPTs really required to attach a TPD?

Yes, all taxpayers with related party transactions are required to attach a TPD, local or otherwise, regardless of the amount and volume of related party transactions. The TPD should include the

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date of creation or preparation so as to ensure its applicability to the RPTs conducted in the taxable year concerned.

Q11. What is the required TPD?

The TPD to be submitted must be the documentation upon which taxpayers relied to determine the transfer pricing prior to or at the time of undertaking the RPTs. Nevertheless, the BIR will also accept TPD prepared not later than the filing due date of the tax return for the taxable year in which the transactions took place.

Simply put, what the BIR requires is the TPD prepared prior to or at the time of the transaction, or after the transaction but not later than the date of filing of the tax return for the fiscal/calendar year in which the transaction takes place. Requiring the submission of contemporaneous documentation ensures the integrity of the taxpayers' positions.

Q12. Is it required that the TPD be updated yearly? Does BIR expect to have an annual/updated TP study?

Whether or not the TPD has to be updated yearly, the following must be considered:

1. If there are significant changes in the business model, the factors or conditions considered in drafting the TPD, and the nature of the RPTs, then, the TPD has to be updated; and
2. If there are none, the old TP shall suffice.

Q13. If the parent company has a TP documentation already covering the transactions with subsidiaries, can the subsidiaries use that for their purpose? Can we attach a TPD of the other transacting related party or even the master file of the group?

Yes, provided the taxpayer relied upon such TP documentation in determining the transfer prices. The local file is preferred, however, since it provides a more detailed information relating to specific intercompany transactions.

Q14. For this year's filing, can we attach a past year's TPD?

The TPD for the immediately preceding year may apply to subsequent RPTs if:

1. The transaction for which the past TPD was prepared is of the same type as the transaction undertaken in the taxable year concerned and was undertaken with the same related party/ies; and

2. The taxpayer can prove that the same conditions, which were made the bases for the past TPD, are squarely applicable to the RPTs in the taxable year concerned, including, but not limited to, the following;

    a. the relationship between the taxpayer and its related party;
    b. the conditions made or imposed between them;

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c. the transfer pricing method/s used for the transaction; and
d. the arm's length conditions.

Q15. Can the taxpayer rely on Philippine Accounting Standards (PAS) 24 disclosures in the Audited Financial Statements (AFS) when preparing the RPT Form? PAS 24 as implemented in the notes to AFS typically does not mention names of each related party, so would it suffice to just transpose the notes to AFS to the RPT Form without mentioning the names of each related party?

RR No. 19-2020 requires full disclosure of all RPTs, which is defined as transfer of resources, services or obligations between a reporting entity and a related party, regardless of whether a price is charged. Unlike the disclosure of related party transactions (RPTs) in the notes to the financial statements, RR No. 19-2020 requires more details to be disclosed in Parts II and III of the RPT Form, which are not usually disclosed by the company in the financial statements.

Part II of the form must contain the following:

1. the registered name of the related party, its address in the country of tax residence and Taxpayer Identification Number;
2. a summary of RPTs per nature of transaction;
3. the amount of tax paid in the foreign country on all types of income received abroad, and the amount of tax withheld on income payments to foreign related parties; and
4. a declaration whether or not the taxpayer availed of benefits under the treaty to justify the application of tax exemption or preferential tax treatment.

This part is more particular on the taxation aspect or the tax treatment of the income received from, or income payments made to, related parties. So, for instance, if monthly royalty payments and a one-time payment of service fees were made to the parent in 2019, two separate disclosures shall be made since the nature of transactions are different -- one for the total amount of these royalty payments for the year, and another for the service fees. In addition, a declaration whether or not the foreign taxpayer availed of treaty benefit (preferential tax treatment or tax exemption as the case may be), and the amount of tax withheld on such income payment shall likewise be made.

Part III, on the other hand, must contain a more detailed disclosure of the substance of the recognized income or expenses as a result of these RPTs, to wit:

1. the aggregate amount per transaction type and per relationship type;
2. the outstanding balance if payment was made on installment basis;
3. terms (interest or non-interest bearing, etc.) and conditions (secured or unsecured, etc.); and
4. provisions for doubtful debts and bad debt expense recognized during the taxable year.

Thus, if a domestic corporation obtained loans from its subsidiary on different occasions, the aggregate amount of such loans (not per contract of loan), including its terms and conditions, outstanding balances, and provisions for doubtful accounts and recognized bad debts for the taxable year, if any, shall be disclosed.

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Verification of the completeness and truthfulness of these disclosures shall be made upon the conduct of tax investigation.

Q16. The enumeration of RPTs in RR No. 19-2020 is not exclusive. Are secondment arrangements with cost recovery/recharging/cost-sharing arrangements considered as related party transactions? Should dividends and redemption of shares be included in the RPT Form?

The enumeration of RPTs in RR No. 19-2020 is not exclusive but from the definition of RPT alone, it can be deduced that the intention is to include within the term all transactions between related parties that result in the transfer of resources, services or obligations, irrespective of their arrangement (with cost-recovery/cost-sharing/recharging) and regardless of whether a price is charged. Dividends and redemption of shares between and among related parties (either paid or payable, received or receivable), though not usually covered by a TPD, should likewise be disclosed in the RPT Form.

Q17. What supporting documents do we need to maintain for the dividend payments?

The following documents have to be maintained as proof of dividend payment:

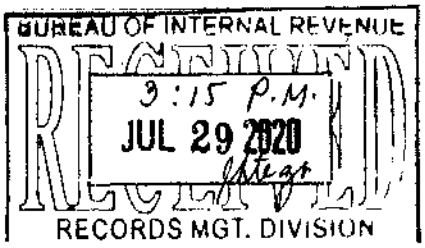
1. a notarized Board of Directors' resolution approving the issuance of dividends, which shall include the amount of dividends, and dates of declaration and payment, among others;
2. Certification under oath by the corporate secretary/custodian banks/depository account holders/broker dealers stating in detail the legal and beneficial owners of all issued and outstanding shares as of record date, their corresponding subscriptions, date/s of acquisition, percentage of ownership and the allocation of dividend;
3. General Information Sheet for the year immediately preceding the date of declaration;
4. proof of payment of such dividends (e.g. bank certificate, telegraphic or wire transfer, etc.); and
5. proof of payment of withholding tax.

Q18. If cost-sharing arrangements are considered as related party transactions, are these required to be in a formal written agreement or will email exchanges suffice?

Some cost-sharing arrangements are abusive RPTs. This makes necessary the submission of a formal written agreement/contract to prove that these are legitimate expenses, in addition to other documents to substantiate the same (e.g., receipts, proof of payment, etc.). To prove that the transaction is legitimate and necessary is one thing, and to prove that the transaction has been conducted at arm's length is another thing.

Q19. Are all contracts required to be attached? What if voluminous and multiple contracts are involved?

All contracts are required to be attached, regardless of volume. In lieu of submission of hard copies of the required documents, the following procedures shall be strictly observed:



1. Scan the original copies of all attachments through scanning machine or device;
2. Save the copies in PDF file format and rename each file using the following format: registered name of the taxpayer_type of document_taxable year. In case of multiple contracts, the filename of each contract shall contain the following information: registered name of the related party_name of contract. All files shall then be stored in a Digital Versatile Disk-Recordable (DVD-R).
3. Label the DVD-R containing the soft copies of the required attachments in accordance with the format prescribed in **Annex "A"** hereof.
4. Submit the duly accomplished DVR-R to the BIR Office where the taxpayer is duly registered, together with a sworn certification, duly signed by the authorized representative of the taxpayer who has the custody of the original documents or has been involved in the preparation and signing of the original documents, stating that the soft copies of the required attachments to the RPT Form contained in the DVD-R are the complete and exact copies of the original thereof which shall be made available during audit for verification purposes.

Q20. Would the taxpayer be required to attach all related party contracts entered into during the year or only those contracts that remain in force upon filing of the ITR? Can representative contracts be attached if voluminous and repetitive?

It must be emphasized that the contracts are the primary proofs of transaction, and principal and supplementary receipts only serve as supporting/corroborating evidence.

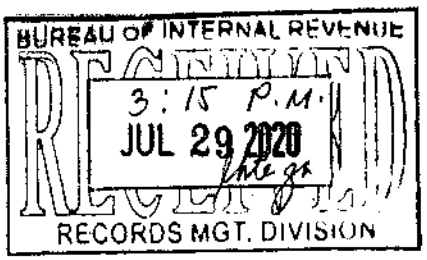
The contracts to be attached to the RPT Form are those executed by the parties to substantiate the RPTs in the taxable year concerned. Thus, if the related parties executed a contract in the taxable year concerned but are intended for transactions to be entered into in a subsequent year, said contract is not required to be attached. On the other hand, contracts executed in the previous year, but are still enforceable and applicable to the RPTs in the taxable year concerned, have to be attached.

Q21. In a normal business sale of goods transaction made by a non-resident Head Office (HO) to a PH subsidiary, are there other required documentation, aside from the Sales Invoice and Delivery Receipts?

Since these are related party transactions, the same must be covered by a TPD and a contract of sale of goods or any equivalent genuine document must be submitted in support thereof, in addition to the sales invoice, delivery receipts, and proof of payment of the consideration.

Q22. What are the consequences for non-filing of the RPT Form and its required attachments? What if there is no actual TPD, would it be okay to submit the RPT Form without TP attachment?

A penalty of not less than One thousand pesos (₱1,000) but not more than Twenty-five thousand pesos (₱25,000) shall be imposed for failure to file the RPT Form and its attachments **due to reasonable cause and not to willful neglect** pursuant to Section 50 of the Tax Code, to wit:



> **"SEC. 250. Failure to File Certain Information Returns.** - In the case of each failure to file an information return, statement or list, or keep any record, or supply any information required by this Code or by the Commissioner on the date prescribed therefor, unless it is shown that such failure is due to reasonable cause and not to willful neglect, there shall, upon notice and demand by the Commissioner, be paid by the person failing to file, keep or supply the same, One thousand pesos (P1,000) for each failure: Provided, however, That the aggregate amount to be imposed for all such failures during a calendar year shall not exceed Twenty-five thousand pesos (P25,000)."

In case of repetition of such offense, the maximum of the penalty, *i.e.*, twenty-five thousand pesos (₱25,000) prescribed therefor shall be imposed pursuant to Section 274 of the Tax Code, to wit:

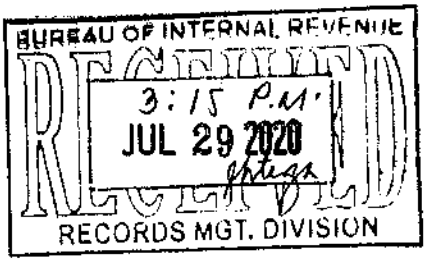
> "**SEC. 274. Penalty for Second and Subsequent Offenses**. - In the case of reincidence, the maximum of the penalty prescribed for the offense shall be imposed."

If, after receiving valid summons to produce the said attachments, the taxpayer still fails or neglects to produce the same, the partner, president, general manager, branch manager, treasurer, officer-in-charge, and the employees responsible for the violation shall, upon conviction, be punished by a fine of not less than Five thousand pesos (P5,000) but not more than ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than two (2) years, pursuant to Section 266 of the Tax Code which reads as follows:

> "**Sec. 266. Failure to Obey Summons.** - Any person who, being duly summoned to appear to testify, or to appear and produce books of accounts, records, memoranda or other papers, or to furnish information as required under the pertinent provisions of this Code, neglects to appear or to produce such books of accounts, records, memoranda or other papers, or to furnish such information, shall, upon conviction, be punished by a fine of not less than Five thousand pesos (P5,000) but not more than ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than two (2) years."

Q23. Please confirm our understanding that the proof of payment of foreign taxes required as an attachment to the RPT Form pertains to foreign taxes paid by a Philippine taxpayer for its income earned abroad arising from a related party transaction.

Any taxes paid to a foreign country by a Philippine taxpayer must be declared in, and the proof of payment thereof must be attached to, the RPT Form so the BIR would be able to compute the correct amount of foreign taxes to be credited against the tax due for the taxable year concerned, provided said foreign taxes were not claimed as deductions during the year.



Q24. What if the deadline of such foreign taxes is after the deadline of the submission of the RPT Form, what should we attach as supporting documents?

If the taxpayer earned an income from its related party in a foreign country but has yet to pay the tax thereon after the filing of the RPT Form, the taxpayer still has to declare in the RPT Form such income and indicate in the column for withholding taxes that it did not pay any tax thereon. The taxpayer must attach the relevant contract, proof of receipt of such income, and a copy of the Tax Residency Certificate issued by ITAD and submitted to the foreign country when it obtained treaty benefits.

However, if the taxpayer paid the corresponding tax after the filing of the RPT Form, the taxpayer must inform the tax examiner during audit of such fact and present the proof of payment thereof.

Q25. Normally, it will be the related party abroad that will have a copy of the "proof of payment of foreign taxes or ruling duly issued by the foreign tax authority". Assuming the related party does not want to share these documents with the Philippine entity arguing that the BIR does not have power over it, will the BIR insist on getting a copy of these documents?

The Philippine taxpayer is typically the one who bears the income tax on any income derived abroad, therefore, it has the right to know how much taxes did it have to pay in the foreign country and the right to obtain any document related to the payment of foreign taxes such as a copy of the return filed for said income and/or a copy of the ruling issued by the foreign tax authority. The BIR, in turn, has the right to obtain the relevant information and documents from the Philippine taxpayer and, in so doing, may enforce all its rights to obtain the same within the bounds of the law.

This is without prejudice, however, to the BIR enforcing its right to obtain said information pursuant to existing and effective tax treaty.

Q26. How is a document showing payment of foreign taxes or copy of foreign ruling be acceptable as proof?

To be acceptable as proof, the document showing payment of foreign taxes or copy of foreign ruling duly issued by the relevant foreign tax authority must be duly authenticated or apostillized.

Q27. Does Part IV(F) pertain only to Tax Treaty Relief Application (TTRA) involving related parties?

The TTRAs to be indicated in the RPT Form must be those filed with the International Tax Affairs Division (ITAD) relative to the income payments made by the Philippine taxpayer to its related party/ies.

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It is imperative then for the tax examiners to coordinate with the ITAD as to the status of these pending TTRAs.

Q28. Does the RR apply to non-stock and non-profit corporations/organizations?

Generally, RR No. 19-2020 only applies to corporations conducted for profit since they are more likely to make material misstatements in their financial statements and tax returns to evade the payment of the correct amount of taxes.

However, since a non-stock and non-profit corporation is allowed to engage in activities conducted for profit without losing its tax-exempt status for its not-for-profit activities, it is likewise required to comply with RR No. 19-2020 if it has related party transactions.

Q29. Has BIR considered data privacy rules? The Tax Code does not specifically ask for the data in the RPT Form.

Though not explicitly provided in RR No. 19-2020, there is an inherent responsibility for the revenue officers to use the right to obtain information in a rational manner. Section 270 of the Tax Code punishes unlawful divulgence to any person or making known in any other manner than may be provided by law information regarding the business, income or estate of any taxpayer, the secrets, operation, style or work, or apparatus of any manufacturer or producer, or confidential information regarding the business of any taxpayer, knowledge of which was acquired by him in the discharge of his official duties

The revenue officers are, therefore, obligated to ensure the confidentiality of information acquired in the exercise of their powers and shall not make them available for public use. After the submission to the BIR, the relevant information and documentation are generally subject to confidential treatment by the BIR.

On the data privacy rules, it must be emphasized that the power of the Commissioner of Internal Revenue to obtain the necessary information to ascertain the correctness of any return, or in determining the liability of any person for any internal revenue tax, or in evaluating tax compliance under Section 5(b) of the Tax Code serves as an exception to the Data Privacy Act (DPA) of 2012. Section 4(e) of the DPA expressly provides that the Act does not apply to "*information necessary in order to carry out the functions of public authority which includes the processing of personal data for the performance by law enforcement and regulatory agencies of their constitutionally and statutorily mandated functions.*"

Though the Tax Code does not specifically ask for the data in the RPT Form, the Secretary of Finance is not prohibited from issuing rules and regulations to mandate the disclosure and submission thereof. Sections 244 and 255 of the Tax Code states that the Secretary of Finance, upon recommendation of the Commissioner, shall promulgate all needful rules and regulations for the effective enforcement of the provisions of the Tax Code, which shall contain provisions specifying, prescribing or defining the manner in which tax returns, **information and reports shall be prepared and reported** and the tax collected and paid, as well as the conditions under which evidence of payment shall be furnished the taxpayer, and the preparation and publication

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of tax statistics, among others. Finally, and as mentioned in RR No. 19-2020, prescribing the use of RPT Form was made in relation to Section 50 of the Tax Code which empowers the Commissioner to distribute, apportion or allocate gross income or deductions between or among related organization, trade or business if it is necessary in order to prevent evasion of taxes or clearly reflect the income of any such organization, trade or business.

Q30. Banks are governed by Bank Secrecy Law. Will this be an acceptable legal basis not to submit the required documents?

The following are the prohibited acts under the Republic Act (RA) No. 1405 or the Law on Secrecy of Bank Deposits:

1. Examination/inquiry/looking into all deposits of whatever nature with banks or banking institutions in the Philippines (including investment in bonds issued by the government) by any person, government official or office (Sec. 2, RA No. 1405); and
2. Disclosure by any official or employee of any banking institution to any authorized person of any information concerning said deposit (Sec. 3, RA No. 1405).

In requiring the submission of BIR Form No. 1709 and its required attachments, the BIR is not examining, inquiring or looking into the deposits of whatever nature with banks or banking institutions in the Philippines of any person or of the bank itself. RR No. 19-2020 only requires the banks to fully disclose their related party transactions and to prove that the same were conducted at arm's length. Nothing in the said RR requires the submission of bank statements. Nonetheless, there are ways to maintain secrecy or confidentiality of said deposit, or any information concerning said deposit, in case it is inevitably part of, included in, the required documents, like redaction and masking. Therefore, the Bank Secrecy Law cannot be used to justify the non-submission of the required documents.

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

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CAESAR R. DULAY
Commissioner of Internal Revenue

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