REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

February 13, 2023

REVENUE MEMORANDUM ORDER NO. 16-2023

TO	:	**All Internal Revenue Officials, Employees, and Others Concerned**
SUBJECT	:	**Prescribing Supplemental Guidelines and Procedures on the Implementation of Revenue Memorandum Order (RMO) No. 40 2022**

I. BACKGROUND

Pursuant to the provisions of Sections 6 (c), 15, 130, 131, 163, 164, 171 and 172 of the National Internal Revenue Code (NIRC) of 1997, as amended; and Sections 224, 225, 260, 262, 263, 263-A, 265, 265-A, 265-B and 279 of the same Code, Revenue Memorandum Order (RMO) No. 40-2022 dated August 23, 2022, was issued to: (1) prescribe the guidelines and procedures in the conduct of enforcement operations, forfeiture and prosecution of cases relative to the unlicensed/illicit/unauthorized production, importation, trade, sale or possession of articles subject to excise tax, such as alcohol, tobacco, petroleum, and mineral products and other miscellaneous articles. These include but are not limited to, raw materials, packages, cigarette paper, tipping paper, cigarette filter tips, ingredients, machinery, equipment, apparatus, mechanical contrivances, and removable fixture of any sort used for their production and the use or possession of false, counterfeit, restored or altered BIR internal revenue stamps, labels or tags; (2) provide for immediate imposition of penalties and sanctions for offenses committed to deter further commission thereof; and (3) maximize the degree of voluntary tax compliance, thereby increasing revenue collection.

This RMO provides supplemental procedures and guidelines on the implementation of RMO No. 40-2022 to ensure effective conduct of apprehension/seizure and detention of unlicensed/unregistered articles.

II. OBJECTIVES

This Order is hereby issued to:

1. Provide clarification and prescribe additional procedures and guidelines to be observed in the conduct of enforcement operations, forfeiture and prosecution of cases;

2. Prescribe uniform documentation and reportorial requirements necessary in the conduct of enforcement operations; and

3. Amend certain provisions of RMO No. 40-2022.

III. DEFINITION OF TERMS

1. Apparatus or mechanical contrivances – any equipment used in the manufacture or production of articles subject to excise tax, and production of internal revenue stamps. These include, but are not limited to, electronic heating devices used for heated tobacco products and all vaping devices (whether rechargeable, battery-operated, or disposable units), vape pods, vape pens and vape mods.

2. Apprehending Team – composed of BIR personnel coming from the BIR Strike Teams, as defined under RMO No. 40-2022, authorized in the Mission Order to enter any house, building, or place where articles subject to excise tax are produced, kept, or are believed by the BIR Strike Teams upon reasonable grounds to be produced or kept, insofar as may be necessary to examine, discover or seize the same; and, to make seizure of any article wherein excise taxes have not been paid, including raw materials, packages, cigarette paper, tipping paper, cigarette filter tips, ingredients, machinery, equipment, apparatus, mechanical contrivances, and removable fixture of any sort used for its unlicensed production and false, counterfeit, restored or altered BIR internal revenue stamps, labels or tags, in violation of the NIRC of 1997, as amended, and any of its implementing rules or regulations.

3. Evidence – seized, discovered, or confiscated excisable articles, raw materials, as well as instruments, apparatus, and/or machines, and other documents relevant thereto.

4. Mission Order (MO) – a document signed by the Deputy Commissioner, Operations Group (DCIR-OG) in his/her capacity as Over-All Head; Assistant Commissioner, Large Taxpayers Service (ACIR-LTS) for Large Taxpayers, or Regional Director (RD) for Non-Large Taxpayers authorizing specific ROs to proceed to a specific address at a specific date to conduct surveillance, and/or to carry out enforcement operations.

5. Registered brand – shall refer to a brand or variant of a brand which is compliant with the product labelling requirements prescribed under existing revenue rules and regulations, and the Graphic Health Warning Law (R.A. No. 10643), and allowed or permitted by the BIR to be manufactured or imported for domestic sale or consumption or intended for export, and in which the corresponding taxes due thereon were already paid before its removal from the manufacturer's premises or from the Bureau of Customs' custody.

7. Unlawful articles – are excisable articles without the required BIR internal revenue stamps, labels or tags. It likewise include excisable articles that are unlicensed/illicit/with unauthorized use or possession of false, counterfeit, restored or altered BIR internal revenue stamps, whether of a bar code or other markings, labels or tags, including raw materials, packages, cigarette paper, tipping paper, cigarette filter tips, ingredients, machinery, equipment, apparatus, mechanical contrivances and removable fixture of any sort used for their production found in the establishment/area/premises of the subject.

8. Storage facility – a place/repository where the seized unlawful articles are to be kept.

IV. POLICIES AND PROCEDURES SUPPLEMENTING RMO NO. 40-2022

1. Introduction to Surveillance Activity

Acquiring preliminary information on the person/entity (the subject) to be placed under surveillance is necessary for an effective implementation thereof. Before the actual surveillance, the concerned BIR Strike Team must:

1.1. Acquaint themselves with the business organization and economic activity of the subject of surveillance, the location of the stores, outlets, production plant/factory and warehouse/storage facility, and such other relevant information as may be available and/or necessary. This must be done with utmost secrecy to prevent leakage of information to the subject.

1.2. Prepare the necessary recommendation for the issuance of a MO for approval and signature of the DCIR-OG, ACIR-LTS or concerned RD.

1.3. Brief the implementing officers on the acts to be performed in compliance with the MOs. The briefing shall be done at least thirty (30) minutes before the actual surveillance. To preserve the confidentiality of the surveillance operation, the identity of the target subject should be revealed to the implementing officers only upon arrival at the site of operations.

1.4. Coordinate with other Government Agencies, such as but not limited to NBI, BOC, PNP, and concerned Local Government Unit (LGU), whenever necessary.

2. Conduct of Surveillance Activity

2.1. Guidelines in the Implementation of Covert MO

The BIR personnel coming from the concerned team of the BIR STRIKE Group shall be authorized to conduct covert surveillance activities on identified business establishments for possible violations of the provision of the NIRC of 1997, as amended, based on a validly issued MO signed by the DCIR-OG, ACIR-LTS or the concerned RD, and shall perform the following procedures:

a. Observe the business operations of the subject. Develop leads from other sources by obtaining information from neighboring business establishments, locating additional outlets, stores, production plant/factory, warehouses/storage, or branches of the subject.

b. Know the suppliers and buyers, and volume of deliveries made to any by the subject. This should be done discreetly.

c. Perform test-buy operations in furtherance of the surveillance, if applicable.

d. Determine any violation of internal revenue laws, rules and regulations committed by the subject.
e. Submit a report within twenty-four (24) hours after completion of the said activity.

The funding of the entire covert surveillance activities, including test-buy operations, shall be derived from the budget of the Office of the Assistant Commissioner, Large Taxpayer Service/concerned Office of the Regional Director.

2.1.1. Evaluation of Covert Surveillance Result

After the conclusion of the Covert Surveillance, a Memorandum Report shall be prepared recommending the necessary enforcement action, if the result of surveillance activities warrants the same. In such case, the Memorandum Report must state that there are reasonable grounds that articles subject to excise tax are produced or kept, so far as may be necessary to examine, discover, or seize the same.

Within forty-eight (48) hours from submission of the Memorandum Report finding that there are reasonable grounds recommending for the necessary enforcement action, the concerned BIR Strike Team shall prepare the necessary MO for the Enforcement Action.

2.2. Guidelines in the Implementation of the Overt MO

The BIR personnel coming from the concerned team of the BIR STRIKE Group shall be authorized to conduct overt surveillance activities on identified business establishments for possible violations of the provision of the NIRC of 1997, as amended, based on the issued MO signed by the concerned authorized revenue official.

The most important factor in overt surveillance is the element of surprise. The subject must be caught unaware to prevent him from committing acts which may defeat the purpose of the surveillance. When the subject is caught *in flagrante delicto* of committing crimes punishable under the NIRC of 1997, as amended, the concerned team of the BIR STRIKE Group must immediately proceed to the enforcement action.

3. Conduct of Enforcement Action Based on Surveillance Activity

3.1 Prepare the necessary MO for the Enforcement Action

All enforcement activities shall be covered by MOs (Annex "A"). The MO shall be signed by the DCIR-OG, ACIR-LTS or the concerned RD. The MOs shall be issued in quadruplicate to be distributed as follows:

Original – Revenue Officer/s directed to conduct the surveillance and to be attached to the report on surveillance after termination of the activity
2nd copy – Investigating office's/division's file copy
3rd copy – Issuing office's/division's file copy
4th copy – Subject's copy

The MO shall state the following:

a. Subject – name of specific person or an officer of a juridical entity

b. Address of Subject – exact address, including enclosed areas like storage, warehouse, trucks, containers, etc.

c. Activities to be Done

   i. To enter any house, building, or place where articles subject to excise tax are produced or kept or are believed upon him reasonable grounds to be produced or kept, so far as may be necessary to examine, discover or seize the same, pursuant to Section 171 of the National Internal Revenue Code (NIRC) of 1997, as amended;

   ii. To make seizures of any article wherein excise taxes has not been paid and, also for the violation of any penal law, rule or regulation, administered by the BIR, pursuant to Section 15 of the NIRC of 1997, as amended;

   iii. To conduct inventory-taking of all products subject to excise tax and check compliance on affixture of internal revenue stamps in accordance with Section 6(C) of the NIRC of 1997, as amended, and existing revenue issuances;

   iv. To check the authenticity of the affixed stamps, pursuant to Section 265 of the NIRC of 1997, as amended;

   v. To secure any document / accounting record related to the unregistered and/or untaxed business, in accordance with existing revenue issuances; and

   vi. To perform other acts necessary to ensure the compliance of provisions of the NIRC of 1997, as amended, and its implementing rules and regulations.

3.2. Service of MO to the Subject

In addition to the procedures provided under subparagraph 4.2 of RMO No. 40-2022, the MO (Annex "A") shall be served to the subject, in the following manner:

a. The MO shall be served to the subject through personal service by delivering personally a copy of the MO at the specified place stated in the MO. RD or ACIR-LTS issuing the MO shall make sure that all personnel involved in the enforcement operations are included in the MO.

b. In case personal service is not possible, the MO shall be served by substituted service. However, substituted service can only be resorted to when the subject is not present at the specified place stated in the MO.

b.1. Substituted service shall be done as follows:

b.1.1 The MO may be left at the specified place, with the subject's clerk or with a person having charge thereof, or any of its authorized representative.

b.1.2 If the specified place is the place of residence, substituted service can be made by leaving the copy of the MO with a person of legal age residing therein.

b.1.3 If no person is found in the specified place, the BIR Strike Team concerned shall bring a barangay official and two (2) disinterested witnesses to the specified place so that they may personally observe and attest to such absence. The MO shall be given to said barangay official. Such facts shall be noted in the bottom portion of the MO, as well as the names, official positions and signatures of the witnesses.

b.1.4 Should the subject taxpayer or its representative, be found at the specified place but refuses to receive the MO, the BIR Strike Team concerned shall bring a barangay official and two (2) disinterested witnesses in the presence of the party so that they may personally observe and attest to such act of refusal. The MO shall be given to said barangay official. Such facts shall be noted in the bottom portion of the MO, as well as the names, official positions and signatures of the witnesses.

"Disinterested witnesses" refers to persons of legal age other than employees of the Bureau of Internal Revenue.

The service shall be proven by an Affidavit of Service of the concerned BIR Strike Team who served the MO.

3.3. Service of Checklist of Documentary Requirements to the Subject

Together with the service of MO, the concerned BIR Strike Team shall present to the subject a Checklist of Documentary Requirements, if applicable, to be submitted/presented to the BIR by the latter within two (2) days, to wit:

a. Certificate of Registration (COR) of Branch/ Warehouse/Storage Facility (Sec. 236 of NIRC of 1997, as amended);

b. Permit to Operate as Manufacturer/Importer of Excisable Goods; Permit to Operate Storage Facility/Warehouse for excise tax purposes (Sec. 154 of NIRC of 1997, as amended);

c. Original / Transfer Certificate of Title (OCT/TCT) of office/premises;

d. Authenticated copy of Lease Contract/Agreement on the office/premises;

e. Permit issued covering the registration of brands, cigarette-making machines and other regulated raw materials used in the manufacture of excisable products;

f. Manufacturer's/Importer's Sworn Statement of selling price;

g. Official Register Books (ORB) for each subject manufacturing facility/warehouse;

h. BIR Forms such as Official Delivery Invoice (GUIA)/ Excise Taxpayer Removal Declaration (ETRD), Importation Documents (i.e., Bill of Lading, Packing List, Commercial Invoice, Import Entry and Internal Revenue Declaration (IEIRD), Proof of Payments, Authority to Release Imported Goods (ATRIG) or other proof of source of goods/inventory kept in subject warehouses);

i. Ending inventory, i.e. raw materials, unused stamps, work-in-process, and finished goods, etc. as of the date of the service of MO for each manufacturing facility/warehouse per ORB; and

j. Other documents that may be determined necessary (e.g. proof of purchase of the items sold; delivery documents, trip ticket, trucking/hauling/delivery contract or agreement, etc.).

4. Inventory Stock-Taking/Physical Count

4.1. Taking of Inventory Count

The taking of inventory count shall be attended by the following:

a. The concerned BIR Strike Team;
b. Photographer and/or Videographer; and
c. Subject or its authorized representative.

The absence of the subject or its authorized representative shall not invalidate the inventory count.

The concerned BIR Strike Teams shall adequately secure the location/storage room where the evidence are kept during the count to examine and verify the authenticity of the articles found in the place of the subject. Whenever necessary, secure assistance with other Government Agencies, such as but not limited to NBI, BOC, PNP, and concerned Local Government Unit (LGU).

The following steps must be followed to secure the articles:

i. Photograph / Video the place and articles found therein.
ii. Cut-off procedures shall be performed to ensure controls are in place over receiving and transfers during the physical inventory period. Daily retrievals or turn-over of evidence shall be done before the start of the inventory proper and the details shall be recorded in the Cut-Off Forms.
iii. Random checking for the presence and authenticity of affixed BIR IRS.

iv. Check if the excisable articles conform with the requirement for lawful/registered brands, such as presence of graphic health warnings and other notations required (exportation labels).
v. Segregation of unlawful/unregistered items from the legitimate/genuine ones.
vi. Issuance of Inventory Sheet to be signed by the concerned BIR Strike Team, and the subject or its authorized representative. If the subject or any of its authorized representative is absent or refuses to sign, the Inventory Sheet signed by the concerned BIR Strike Team shall suffice.
vii. The taking of items must be properly sealed and labelled.

5. Issuance of Apprehension Slip

5.1. Introduction to Issuance of Apprehension Slip

After the Inventory Stock-Taking/Physical Count and determining that the items found in the subject's premises are illicit (e.g. no stamps, fake stamps, etc.), the same shall be immediately seized and confiscated, subject to the issuance of the Apprehension Slip (BIR Form No. 0423).

5.2. Issuance of Apprehension Slip

An Apprehension Slip shall be issued for all seized/confiscated articles, raw materials, packages, cigarette paper, tipping paper, cigarette filter tips, ingredients, machinery, equipment, apparatus, mechanical contrivances, and removable fixture of any sort used for their production and the use or possession of false, counterfeit, restored or altered BIR internal revenue stamps, labels or tags found to be in violation of any tax laws, rules and regulations. The subject must be provided a copy of the Apprehension Slip, with proof of receipt thereof.

Within seven (7) days from receipt of the last Apprehension Slip concluding the entire enforcement action, a Demand to Comply (Annex "B") shall be communicated to subject relative to the detention of package containing taxable articles, pursuant to Section 172 of the NIRC of 1997, as amended.

The subject, as part of due process, should be served with the MO, Checklist of Documentary Requirements on the start of the enforcement activity and whenever applicable, Apprehension Slip/s and Inventory Sheets on the last day of the enforcement action and Demand to Comply.

6. Procedures after Inventory Count and Issuance of Apprehension Slip

6.1. The concerned BIR Strike Team shall compile the inventory sheets and ensure completeness of records.

6.2. The concerned BIR Strike Team shall hold a meeting to discuss observations, assess general compliance with proper count procedures, and reconcile any unusual differences of data.

6.3. The concerned BIR Strike Team shall render an inventory summary report to be submitted to the Team Head.

6.4. The Apprehending Team shall report immediately to the Team Leader the result of the apprehension not later than the following day from the issuance of the last Apprehension Slip.

6.5. A final memorandum report on all apprehended items with corresponding Apprehension Slip/s must be prepared and issued by the Apprehending team within seven (7) days from date of issuance of the last Apprehension Slip.

7. Turnover of Apprehended Items to the BIR Storage Facility

7.1. The apprehended items which are in violation of the provision of the NIRC of 1997, as amended, shall be considered evidence against the subject.

7.2. It is the duty of the Apprehending Team to check the proper turnover of evidence to the Storage Facility. The turnover of evidence shall be witnessed by the above-mentioned persons in 4.1 of this Order.

7.3. The subject's failure to attend, after being duly notified, shall be construed as a waiver of his/her right to witness the turnover.

7.4. A Certificate of Acceptance must be issued and duly signed by the Apprehending Team and the representative of the storage facility.

7.5. The Certificate of Acceptance must contain the total number of evidence as described in the Inventory Sheets.

The DCIR-OG, as the Over-all Head, shall designate the storage facility for the Large Taxpayers Service Office and Regional Offices. However, the custody of the apprehended items shall remain within the storage facility with the Large Taxpayers Service/Revenue Region having jurisdiction over the subject.

8. Issuance of Collection Letter

If the subject fails to comply and/or disagrees with the initial findings stated in the Demand to Comply, the BIR Strike Team shall issue a Collection Letter within five (5) days, for the collection of deficiency excise taxes arising from the enforcement operation. No Preliminary Assessment Notice (PAN) shall be issued when the excise due on excisable articles has not been paid pursuant to Section 228 of the NIRC of 1997, as amended. If the excise tax discrepancies remained unsettled/unpaid, the corresponding Final Assessment Notice (FAN) and Formal Letter of Demand (FLD) shall be issued and served upon the subject.

9. Other Enforcement Actions

9.1. Issuance of Subpoena Duces Tecum [Section 5(C) of the 1997 NIRC, as amended]

The subject, or any officer or employee of such subject, or any person having possession, custody, or care of the books of accounts and other accounting records containing entries relating to the business of the subject liable for tax, or any other person, can be summoned to appear before the Commissioner of Internal Revenue (CIR) or his duly authorized representative at a time and place specified in the summons and to produce such books, papers, records, or other data, and to give testimony.

10. Guidelines in Handling Payment / Offer of Payment

In any case the subject offers to pay the deficiency excise taxes and corresponding penalties, the offer of payment must originate from the subject.

The imposition of the compromise penalties shall be in accordance with revised schedule of compromise penalties prescribed under existing revenue issuances and regulations. However, imposition of / acceptance of compromise penalties are amounts suggested for the settlement of criminal offense, thus, proper evaluation of the case must be made to determine if the offer to pay the compromise penalty by the subject should be accepted by the BIR Strike Team.

The offer of compromise settlement shall be governed by Section 204 of NIRC of 1997, as amended, and as implemented by existing revenue issuances and regulations.

11. Filing of Criminal Complaint

The result of the investigation and/or operation pursuant to this Order, shall be forwarded to the Prosecution Division for Large Taxpayers Service or the Legal Division of the concerned Revenue Region, as the case may be, for evaluation and filing of appropriate legal action in accordance with existing laws, rules and regulations.

11.1. Section 266 of the NIRC of 1997, as amended – Failure to Obey Summons

A criminal complaint for failure to obey summons shall be initiated and filed against the subject and other responsible officer/person in case of failure to obey the SDT within the prescribed period.

11.2. Other Criminal Charges

All Other Related / Applicable Criminal Cases under relevant provisions of the NIRC of 1997, as amended.

A Demand Before Suit shall be issued for criminal complaints involving collection of tax liabilities.

12. Disposition of Evidence/Apprehended Items

12.1. Leave of Court

In the event that a case has already been filed in court, proper leave of court for destruction should be filed before said court.

12.2. Representative Sample

12.2.1. A representative sample is a sample that reasonably represents the total evidence apprehended.

12.2.2. The taking of such sample must be attended by the Apprehending Team, attending lawyer from the Legal Group, representative from the Storage Facility, two (2) disinterested witnesses, and the subject or its authorized representative.

12.2.3. The subject's failure to attend, after being duly notified, shall be construed as a waiver of his/her right to witness the taking of representative sample.

12.2.4. The taking of the representative sample must be photographed/filmed/videotaped and properly documented by the focal person of the Apprehending Team.

12.2.5. The representative sample shall be turned over to the Apprehending Team for safekeeping and future reference.

12.2.6. The inventory of the representative sample shall be listed and contained in the Representative Sample Sheet to be signed by the Apprehending Team, attending lawyer, representative of the Storage Facility, two (2) disinterested witnesses, and the subject or its authorized representative.

12.2.7. If the subject or any of its authorized representative is absent or refuses to sign, the Representative Sample Sheet signed by the Apprehending Team, attending lawyer and representative of the storage facility shall suffice.

12.3. Remaining Evidence/Apprehended Items

A Certificate of Remaining Evidence shall be issued pertaining to the remaining evidence left to the Storage Facility to be signed by the Apprehending Team, attending lawyer, authorized representative of the Storage Facility, and two (2) disinterested witnesses.

A final memorandum report shall be issued by the Apprehending Team stating the sample taken and the recommendation for destruction of the remaining evidence in the Storage Facility, for the approval of the DCIR-OG.

12.4. Destruction of Apprehended Items

The remaining apprehended items, regardless of subsequent payment of unpaid excise taxes and incremental penalties, must be disposed of by destruction or by any other appropriate modes of disposition at the discretion of the CIR, subject to the existing rules and regulations.

12.4.1. Upon receipt of the duly approved final memorandum report with recommendation for destruction referred in the preceding paragraph, the Apprehending Team shall prepare a Letter of Withdrawal and Destruction for the remaining evidence, subject to the approval of the CIR.

12.4.2. Upon approval by the CIR, the Apprehending Team shall issue and serve a Notice of Destruction to the concerned subject, informing the date and time of destruction of the remaining evidence.

12.4.3. The Apprehending Team shall submit the Letter of Withdrawal and Destruction to the Storage Facility for the release and destruction of the remaining evidence.

12.4.4. The volume/quantity of withdrawal contained in the Letter of Withdrawal and Destruction should tally with the volume/quantity indicated in the Certificate of Remaining Evidence previously issued by the Storage Facility to the Apprehending Team.

12.4.5. The process of destruction may be attended by the following:

i. Apprehending Team or any of its members
ii. CIR or his/her authorized representative
iii. Representative from the Department of Finance (DOF)
iv. DCIR-OG or his/her representative
v. Representative from the Storage Facility
vi. Representative from the Legal Group, BIR
vii. Representative from the Media
viii. Representative from other concerned government agency/ies
ix. Subject or authorized representative
x. Third party/entity in charge with the destruction

12.4.6. The subject's failure to attend, after being duly notified, shall be construed as a waiver of his/her right to witness the said destruction.

12.4.7. A Certificate of Destruction must be issued and duly signed by any authorized BIR representative and/or the third-party entity conducting the destruction.

12.4.8. The destruction of the remaining evidence shall be photographed/ filmed/ videotaped and properly documented by the focal person duly assigned by each Revenue Region, Large Taxpayers Service, and/or other concerned offices.

12.4.9. A Final Memorandum Report shall be issued by the Apprehending Team relative to the destruction.

13. Documentation of Destruction Activity

DCIR-OG, ACIR-LTS and concerned RDs should assign a focal person who will document the process of destruction of the seized/unlawful articles from the commencement until completion.

14. Storage Retention Preservation of Reports, Photos, and Videos of all the activities

It is the duty of the Apprehending Team to preserve all reports, photos, and videos of all activities relevant to the entire enforcement and operation until proper turn over to the proper authority/office.

IV. REPEALING CLAUSE

All orders and other issuances inconsistent herewith are hereby modified or repealed accordingly.

V. EFFECTIVITY

This Order shall take effect immediately upon approval.

(Original Signed)
ROMEO D. LUMAGUI, JR.
Commissioner of Internal Revenue

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