REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

JUN 29 2022

REVENUE REGULATIONS NO. 11-2022

SUBJECT: Prescribing the Guidelines and Procedures for the Spontaneous Exchange of Taxpayer Specific Rulings

TO: All Internal Revenue Officers and Others Concerned

Section 1. Background

Spontaneous exchange of relevant information on taxpayer-specific rulings (the "transparency framework") provides tax administrations with access to timely information on rulings that have been granted to a foreign related party or a permanent establishment (PE) of their resident taxpayer, which can be used in conducting risk assessments. The absence of such information exchange could give rise to base erosion and profit shifting ("BEPS") concerns.

The spontaneous exchange of rulings covers certain past rulings as well as future rulings, pursuant to pre-defined periods. The exchanges are made pursuant to international exchange of information agreements, such as Double Taxation Agreements (DTAs), Tax Information Exchange Agreements (TIEAs) or the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAC), which provide for the legal conditions under which the exchanges take place, including the need to ensure taxpayer confidentiality. The information must be exchanged with all potential exchange jurisdictions, including the country of residence of the immediate parent company and ultimate parent company.

Section 2. Domestic Legal Framework for Exchanging Information on Rulings

In the Philippines, the legal basis for such exchange can be found in the EOI provision of its DTAs, which mandates the competent authorities of the contracting states to exchange such information as is necessary for carrying out the provisions thereof or of the domestic laws of the Contracting States concerning the taxes to which the DTA applies. The EOI provision includes all types of exchanges, be it upon request, automatic or spontaneous.

Section 3. Spontaneous Exchange of Rulings to the Potential Exchange Jurisdictions

a. The Responsible Office

The International Tax Affairs Division (ITAD) of the Bureau of Internal Revenue (BIR), through its EOI Section, shall be responsible for exchanging the taxpayer specific rulings to the foreign tax authority of the potential exchange jurisdictions on or before the prescribed deadline.

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b. Information Subject to the Exchange

The rulings within the scope of the transparency framework include the following:

i. rulings related to a preferential regime;
ii. cross-border unilateral Advance Pricing Arrangements (APAs) and any other cross-border unilateral tax ruling (such as an Advance Tax Ruling) covering transfer pricing or the application of transfer pricing principles
iii. cross-border rulings giving a unilateral downward adjustment to the taxpayer's taxable profits in the country giving the ruling
iv. PE rulings; and
v. related party conduit rulings.

c. Template for Information Exchange

The Philippines shall use the template designed by the Forum on Harmful Tax Practices (FHTP) and the Inclusive Framework on BEPS **(Annex A)**. Revisions of the template shall always be adopted by the Philippines so long as it is practical and not burdensome on the part of the tax administration.

d. Potential Exchange Jurisdictions

Type of Ruling	Potential Exchange Jurisdictions
Rulings related to certain preferential regimes	i. The countries of residence of all related parties (a 25% threshold would apply), with which the taxpayer enters into a transaction for which a preferential treatment is granted or which gives rise to income from related parties benefiting from a preferential treatment (this rule also applies in a PE context); and ii. The residence country of (a) the ultimate parent company and (b) the immediate parent company.
Unilateral advance pricing arrangements (APAs) or other cross-border unilateral rulings in respect of transfer pricing	i. The countries of residence of all related parties with whom the taxpayer enters into transactions that are covered by the APA or cross-border unilateral tax ruling; and ii. The residence country of (a) the ultimate parent company and (b) the immediate parent company.
Rulings providing for a downward adjustment of taxable profits	i. The countries of residence of all related parties with whom the taxpayer enters into transactions covered by the ruling. ii. The residence country of (a) the ultimate parent company and (b) the immediate parent company.
PE rulings	i. The residence country of the head office, or the country of the PE, as the case may be; and ii. The residence country of (a) the ultimate parent company and (b) the immediate parent company.
Related party conduit rulings	i. The country of residence of any related party making payments to the conduit (directly or indirectly); ii. The country of residence of the ultimate beneficial owner (which in most cases will be the ultimate parent company) of payments made to the conduit; and

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	iii. To the extent not already covered by ii). the residence country of (a) the ultimate parent company and (b) the immediate parent company.

e. Timeliness of Exchanges

Upon the effectivity of this Regulations, the EOI Section of ITAD shall ensure that the information to be exchanged is transmitted to the relevant jurisdictions in accordance with the following timelines:

i. for past rulings, as soon as possible after identifying the potential exchange jurisdictions; and
ii. for future rulings, as soon as possible and no later than three months after the issuance thereof.

It shall likewise ensure that subsequent requests by another jurisdiction for a copy of the taxpayer specific ruling is responded to, or a status update is provided, within 90 days upon receipt of such request.

f. Mode of Exchange

Rulings may either be exchanged via the following modes of exchange:

1. registered mail; or
2. encrypted electronic mail (email).

The EOI Section shall always ensure that rulings and information provided via email are password-protected. Moreover, in choosing the mode of exchange, the EOI Section shall consider the policy of its treaty partners.

Section 5. Information Gathering Process

For the Philippines, past rulings that fall within the scope of the transparency framework pertain only to PE rulings or rulings concerning the existence or absence of a PE of a foreign enterprise in the Philippines that were issued either:

i. on or after 1 January 2015 but before 1 September 2017; or
ii. on or after 1 January 2012 but before 1 January 2015, provided they were still in effect as of 1 January 2015.

Future rulings refer to rulings issued after such periods.

Past rulings

If the past ruling does not contain sufficient information to enable identification of all the relevant countries with which the information needs to be exchanged, the Rulings and MAP Section must apply the "best efforts" approach to identify them. This includes the following:

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i. checking of information included in the file supporting the tax treaty relief application (the "ruling file"), BIR Form No. 1709, any relevant transfer pricing documentation, if available;
ii. obtaining information from the domestic withholding agent, foreign taxpayer or its representative in the Philippines, the Securities and Exchange Commission or other possible information holders; and
iii. any other manner leading to the determination of the needed information.

All requests for information related to exchange of past rulings shall be signed by the Assistant Commissioner for Legal Service (ACIR-LS).

Future rulings

The offices responsible for the issuance of the taxpayer specific rulings mentioned in Section 5(b) shall take the necessary measures to ensure that all potential exchange jurisdictions are identified swiftly for all future rulings. This may require the amendment of the ruling process, if necessary, the amendment of the BIR Forms that must be submitted by the taxpayer when requesting for a confirmatory ruling, and the inclusion of transfer pricing documentation as part of the documentary requirements, among others.

Nothing shall prevent the Bureau, however, from requesting other relevant documents from the domestic and foreign taxpayers to obtain information on the potential exchange jurisdictions, in addition to the usual documents that must accompany every request for confirmatory ruling pursuant to existing revenue issuances. All requests for information related to exchange of future rulings shall be signed by the respective heads of offices.

a. Rulings originating from the ITAD

The classification of future rulings originating from the ITAD that are subject to the spontaneous exchange of rulings, and the identification of, and gathering of information on, the potential exchange jurisdictions shall be the responsibility of the Rulings and MAP Section of ITAD.

After classifying the rulings to be exchanged and identifying the potential exchange jurisdictions, the Rulings and MAP Section shall immediately transmit the ruling file to the EOI Section.

b. Other Rulings

The office that issued taxpayer specific rulings other than those originating from ITAD shall be responsible for ensuring that that all potential exchange jurisdictions are identified swiftly for all future rulings.

For the purpose of exchanging rulings, coordination between that office and ITAD shall always be made. The ruling file, with a summary of the potential exchange jurisdictions, shall be transmitted to the EOI Section of ITAD in a secure manner within thirty (30) days from its issuance.

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Section 6. Review and Supervision Mechanism

The Chief of ITAD shall initially review and supervise the implementation framework to ensure that all relevant information on the identification of rulings and potential exchange jurisdictions is captured adequately.

The final review shall be done by the ACIR-LS who shall also sign all documents related to the spontaneous exchange of rulings to the relevant foreign tax authority.

Section 7. Receipt of Spontaneous Exchange of Rulings from Foreign Tax Jurisdictions

The EOI Section of ITAD shall be responsible for receiving rulings spontaneously exchanged by its treaty partners. If it is established, upon evaluation, that the ruling will aid the tax examiners in their tax investigation, a copy thereof shall be immediately forwarded to the Revenue District Office (RDO) having jurisdiction of the domestic taxpayer.

For monitoring purposes, the RDO shall always provide the EOI Section feedback on the usefulness of the information provided by the foreign tax jurisdiction within thirty (30) days from the termination of the tax investigation.

Section 8. Confidentiality

In the spontaneous exchange of tax rulings, the EOI Section shall be guided by the confidentiality rules contained in the EOI provision of the DTAs, Section 270 of the National Internal Revenue Code of 1997, as amended, Republic Act No. 10173, otherwise known as the Data Privacy Act of 2012, and of existing revenue issuances.

Section 9. Repealing Clause

All existing revenue issuances or portions thereof inconsistent herewith are hereby revoked and/or amended accordingly.

Section 10. Effectivity

This Regulations shall take effect after fifteen (15) days following its publication in a newspaper of general circulation.

CARLOS G. DOMINGUEZ
Secretary of Finance

JUN 29 2022

Recommending Approval:

CAESAR R. DULAY
Commissioner of Internal Revenue

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