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TAX Advisory

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Dear Valued Clients,

The Bureau of Internal Revenue (BIR) recently released the following Revenue Regulations and Revenue Memorandum Order.

BIR RETURN ON RELATED PARTY TRANSACTIONS **(RR No. 19-2020)**

As transactions from around the world is becoming more complex and have been subject to abuse by taxpayers to evade taxes, primarily those transactions with related parties, the BIR release an amending regulation to properly regulate such transactions. Pursuant to Sec. 244 and 6(H) of the National Internal Revenue Code of 1997 (NIRC) or the Tax Code, as amended, and in relation to Sec. 50 of the same code, which was implemented by RR No. 2-2013, the regulation was issued to prescribe the new BIR Form No. 1709 - Information Return on Related Party Transactions (Domestic and/or Foreign) replacing BIR Form No. 1702H - Information Return on Transactions with Related Foreign Persons.

The said regulation, which set the definitions, procedures and disclosures, talks about three points:

1. Related Party
2. Related Party Transactions
3. Related Party Disclosures

Related party is a person or entity that is related to the reporting entity, i.e., the entity that is preparing its financial statements. However, in all cases, according to the regulation, the substance of relationships between entities shall be taken into account and not merely the legal form.

According to the regulation the **related party transactions** shall include, but not limited to, the following:

- a. Purchases or sales of goods (finished or unfinished);
- b. Purchases or sales of property and other assets;
- c. Renting or receiving of services;
- d. Leases;
- e. Transfers of Research and Development;
- f. Transfers under license agreements;
- g. Transfers under finance arrangements (including loans and equity contributions in cash or kind)
- h. Provision of guarantees or collateral;
- i. Commitments to do something if a particular event occurs or does not occur in the future, including executory contracts, i.e., contracts under which neither party has performed any of its obligations or both parties have partially performed their obligations to an equal extent (recognized and unrecognized); and
- j. Settlement of liabilities on behalf of the entity or by the entity on behalf of that related party.



It also discussed salient points of *related party disclosures* which are aligned to the Philippine Accounting Standard (PAS) 24 - Related Party Disclosure. However, the main addition from this regulation is requiring the taxpayer to attach BIR Form No. 1709 on the Income Tax Return with its own supporting documents. As specified on the regulation the taxpayer must observe the following:

1. BIR Form No. 1709 shall be completely and truthfully accomplished by the taxpayer or its authorized representative/s and shall be attached to the ITRs for the current taxable year and subsequent years, making it an integral part of the latter.
2. The nature of transaction and the accounts affected shall be described in detail.
3. The “*business overview of the ultimate parent company*” referred in Part IV(A) of BIR Form No. 1709 shall include the profile of the multinational group of which the taxpayer belongs, along with the name, address, legal status and country of tax residence of each of the related parties with whom intra-group transactions have been entered into by the taxpayer, and ownership linkages among them.
4. On the other hand, the “*functional profile*” referred to in Part IV (B) of the BIR Form No. 1709 shall include a broad description of the business of the taxpayers and the industry in which it operates, and of the business of the related parties with whom the taxpayers has transacted.
5. The following are required to be attached to the BIR Form No. 1709:
 - a. Certified true copy of the relevant contracts or proof of transactions;
 - b. Withholding tax returns and the corresponding proof of payment of taxes withheld and remitted to the BIR;
 - c. Proof of payment of foreign taxes or ruling duly issued by the foreign tax authority where the other party is a resident; and
 - d. Certified true copy of Advance Pricing Agreement, if any; and
 - e. Any transfer pricing documentation.
6. No spaces shall be left unanswered. If one or some portions are not applicable, such fact shall be so stated.



ADDITIONAL PRESCRIBED DRUGS AND MEDICINES AS VAT EXEMPT (RR No. 18-2020)

Pursuant to Section 1 of R.A. No. 11467, which further amend Sec. 109 of the Tax Code provide for the exemption from VAT of sales and importation of drugs and medicines prescribed for Diabetes, high-cholesterol, hypertension, cancer, mental illness, tuberculosis, and kidney diseases. The effectivity date of the VAT exemptions of the medicines related to the mentioned illness are as follows:

1. Diabetes, high cholesterol, and hypertension - Beginning **January 1, 2020**; and
2. Cancer, mental illness, tuberculosis, and kidney diseases - Beginning **January 1, 2023**

However, the exemption from VAT shall only apply to the sale or importation by the manufacturers, distributors, wholesalers, and retailers of drugs and medicines included in the *"List of approved drugs and medicines"* issued by the Department of Health (DOH) for this purpose.

Finally, there shall be a refund on VAT on importation of prescription drugs and medicines for diabetes, high cholesterol and hypertension included in the approved list of Department of Health-Food and Drug Administration (DOH-FDA) from the effectivity of R.A. No. 11467 on January 27,2020 until the effectivity of these regulations, in accordance with the existing procedures for refund of VAT on importation. Provided that, such input tax on importation is not yet reported and claimed as input tax credit in the monthly and/or quarterly VAT returns. The same shall not be allowed as input tax credit pursuant to Sec. 110 of the Tax code of 1997, as amended, for purposes of computing the VAT payable of the concerned taxpayer/s for the said period.

EXTENTION TO PROCESS VAT REFUND/CLAIM AND SUSPENSION OF THE 90-DAY PERIOD (RR No 16-2020)

In order to address the concerns of both the taxpayer and the revenue officials in terms of processing the VAT refund/claim, the BIR issued this regulation pursuant to RR No. 11-2020 where the taxpayer-claimants have 30 days to from the lifting of the quarantine to file their respective refund/claim. However, since there is a difficulty for some taxpayers to complete all the required documents needed for filing their VAT refund/claim and due to limited access in public transportations, the regulation provided guidelines for those highly-affected taxpayers in processing their application and suspend the implementation of the 90-day period to process every time there is an occurrence of an event that restricts the mobility and normal operations of the Processing Offices.

Accordingly, the filing due dates were extended based on the following quarters:

Quarter Ending	Date of Filing
Calendar Quarter ending March 31, 2018	July 15, 2020
Fiscal Quarter ending April 30, 2018	July 31, 2020
Fiscal Quarter ending May 31, 2018	August 15, 2020
Calendar Quarter ending June 30, 2018	August 31, 2020

This however does not apply to areas not yet declared to be in a **General Community Quarantine** state. In which case, the deadline shall be 30 days from the lifting of the ECQ or Modified ECQ in the affected areas of taxpayer-claimant or the above stated deadlines, whichever comes later. Finally, the 90-day period of processing VAT refund claims shall be suspended in areas where ECQ or Modified ECQ is still in force.

EXTENTION OF TAX AMNESTY AVAILMENT UNTIL DECEMBER 31, 2020 (RR No. 15-2020)

Due to the COVID-19 pandemic, the BIR issued this regulation to extend the Tax Amnesty on Delinquencies availment until **December 31, 2020** which may be further extended if circumstances warrant such extension. It also amended Section 5 of the RR No. 4-2019 which pertains to the Manner of Availment of Tax Amnesty on Tax Delinquencies on which the added paragraphs and sentences provided time limitation on the process in favor to the taxpayer.

UPDATED POLICIES ON ASSET DISPOSAL / DESTRUCTION CLAIMED AS LOSS (RMO No. 21-2020)

Claiming losses pertaining inventory, machinery or equipment due to destruction, disposal, obsolescence or other causes rendering the same unfit for sale or for use in production requires certification from the BIR before such can be deducted for income tax purposes. An updated order in conducting the inspection and supervision of the destruction or disposal of mentioned asset were released by the BIR. The objective of which is to establish the policies, guidelines and procedures for the inspection and supervision of the destruction or disposal and to facilitate the processing of the application.

The regulation introduced the concept of a **“Third-party”** witness wherein a person recommended by the taxpayer who may either be a BIR accredited practitioner or external auditor, subject to BIR approval to witness the process of destruction or disposal of the asset. And the **“Virtual means”** which is a mode of online communication through the use of technology available to both BIR and the taxpayer in witnessing the process of destruction or disposal.



Below is a very brief procedure that the taxpayer should follow:

1. File the Application for Destruction / Disposal of Goods / Asset together with the following:
 - a. Sworn Declaration of Goods/Assets as Waste or Obsolete
 - b. List of Goods/Assets for Destruction/Disposal or List of
 - c. Machineries/Equipment for Destruction/Disposal
Letter of Intent in case the taxpayer is considering a third party as a witness
 - d. Inventory List of Goods duly received by the BIR
 - e. Supporting documents to prove the reasons stated in this application as the cause for the destruction/disposal
 - f. Other documents to prove the correctness of the value of the goods/assets to be destroyed/disposed
2. Arrange the inventory / assets in a manner that will facilitate easy identification and counting. Failure to observe this requirement may be a ground for denial.
3. Ensure that the following procedures are observed in case the taxpayer is authorized to have the destruction / disposal witnessed by the BIR representative (physical witnessing or virtual means) or by a third party:
 - a. Notarized Sworn Declaration of Asset Disposal containing the list and description of the asset, valuation (sated in Section IV.5), and taxable year the assets were initially recognized or acquired.
 - b. Photographs of the asset BEFORE, DURING and AFTER the destruction/disposal of the asset
If witness by third party, a video footage of the activity
 - c. BEFORE, DURING and AFTER the destruction shall be submitted in a format acceptable to the BIR.
 - d. Sworn declaration together with the video, photo files and latest audited financial statements.
 - e. Notarized Sworn declaration executed by the third party who witness the process of destruction/disposal.
4. Coordinate and assist the duly authorized BIR representative in the verification of the value of the goods / assets / equipment to be destroyed / disposed and in the supervision on the actual destruction / disposal thereof.
5. Submit all required documents, including the report of the third party certifying therein that the procedures under Section V.B.4 (4.a & 4.b) of the order were followed.



The procedures of on the part of the Large Taxpayer (LT) Office or Revenue District Office (RDO) were also mentioned in the order. At the end of the process, the BIR will issue the "Certificate of Deductibility of Goods / Assets / Destructed / Disposed" to the taxpayers as a proof of loss.

Please be guided accordingly.

Sincerely,
Tax Advisory Services

This tax advisory is for general information only and should not be treated as a substitute for specific advice. We still recommend that you seek professional assistance in determining the applicability of this advisory. For any comment or question on this matter, please email us at aocheadoffice@alaso plascpas.com or call us at (02) 7759-5090 to 91.