

# Tax *brief*

August 2020





#### **BIR ISSUANCES**

RR No. 18-2020  
RR No. 19-2020

RMO No. 20-2020

RMO No. 21-2020  
RMO No. 23  
and 25-2020  
RMC No. 69-2020

RMC No. 70-2020  
RMC No. 72-2020

RMC No. 74  
and 77-2020  
RMC No. 75-2020  
RMC No. 76-2020

VAT-exempt sales/ importations of drugs and medicines prescribed for certain diseases  
Submission of BIR form 1709 and transfer pricing documentation for related party transactions now required

New and modified ATCs for excise tax on tobacco products, heated tobacco products, and vapor products

Revised policy on inventory destruction/ disposal  
ATRIGs for VAT-exempt importations shall now be issued by the RDO having jurisdiction over the port of entry

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GR 233301

120-day period for the BIR to act on refund application starts upon submission of complete supporting documents



# BIR Issuances

## **VAT-exempt sales/ importations of drugs and medicines prescribed for certain diseases**

(Revenue Regulations No. 18-2020 issued on July 08, 2020)

Sale and importation by the manufacturers, distributors, wholesalers and retailers of prescription drugs and medicines included on the list of approved drugs and medicines by the Department of Health (DOH) for diabetes, high cholesterol, and hypertension shall be VAT-exempt beginning January 27, 2020.

VAT paid on importations of qualified prescription drugs and medicines for diabetes, high cholesterol, and hypertension from effectivity of RA No. 11467 on January 27, 2020 until effectivity of these Regulations (July 09, 2020) may be applied for refund, provided that the VAT was not yet claimed as input tax credit in the VAT returns. Existing procedures for VAT refund shall be followed.

The list of VAT exempt drugs and medicines for diabetes, high-cholesterol and hypertension as published by DOH can be accessed in the below link:

[https://www.bir.gov.ph/images/bir\\_files/internal\\_communications\\_2/RMCs/2020%20RMCs/RMC%20No.%2062-2020%20FDA%20List.pdf](https://www.bir.gov.ph/images/bir_files/internal_communications_2/RMCs/2020%20RMCs/RMC%20No.%2062-2020%20FDA%20List.pdf)

Moreover, effective January 01, 2023, sale and importation of prescription drugs for cancer, mental illness, tuberculosis and kidney diseases shall also be VAT-exempt.

## **Submission of BIR Form 1709 and transfer pricing documentation for related party transactions now required**

(Revenue Regulations No. 19-2020 issued on July 08, 2020)

The Bureau of Internal Revenue (BIR) now requires taxpayer to submit Information Return on Related Party Transactions (BIR Form 1709) and its supporting documents, as attachment to the Annual Income Tax Return (ITR), effective July 25, 2020.

In addition to the requirement of Philippine Accounting Standards (PAS) 24 to disclose related party transactions in the notes to financial statements, the following information are required to be reported in BIR Form 1709:

- a. Summary of related party transactions with foreign related parties and domestic related parties, together with the amount of tax withheld, if any;
- b. Details of related party transactions per category (e.g. transactions with parent, subsidiaries, associates); and
- c. Other information such as the business overview of the ultimate parent company, functional profile of the taxpayer, and pending tax treaty relief application details.

If some portions of the form are not applicable to the taxpayer, such fact shall be stated in the form.

The following documents are required to be attached to BIR Form 1709:

- a. Certified true copy of the relevant contracts or proof of transaction;
- 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;
- d. Certified true copy of advance pricing agreement, if any; and
- e. Any transfer pricing documentation.

The transfer pricing documentation applies to any controlled transactions between associated enterprises as provided under RR No. 02-2013.

To ensure compliance, the revenue regulations also enjoined tax examiners to conduct a thorough examination of related party transactions of taxpayers.

# BIR Issuances



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## New and modified ATCs for excise tax on tobacco products, heated tobacco products, and vapor products

(Revenue Memorandum Order No. 20-2020, issued on July 08, 2020)

To properly identify and monitor tax collection from excise taxes on tobacco products, heated tobacco products, and vapor products, in connection with the implementation of RA Nos. 11346, 11467 and 10351, the following new and modified alphanumeric tax codes (ATCs) was included in BIR Form 2200-T (Excise Tax Return for Tobacco Products):

### Newly created ATCs:

ATC	Description	Tax Rate	ATC
XT155	Cigarettes packed by machine - Effective January 1, 2020 - Effective January 1, 2021 - Effective January 1, 2022 - Effective January 1, 2023	Php 45.00 per pack Php 50.00 per pack Php 55.00 per pack Php 60.00 per pack	RA No. 11346
XT160	On heated tobacco products - Effective January 1, 2020 - Effective January 27, 2020 - Effective January 1, 2021 - Effective January 1, 2022 - Effective January 1, 2023	Php 10.00 per pack Php 25.00 per pack  Php 27.50 per pack Php 30.00 per pack Php 32.50 per pack	RA Nos. 11346 and 11467
XT165	Vapor products a. Effective January 1, 2020 to January 26, 2020 - 00.00 ml to 10.00 ml - 10.01 ml to 20.00 ml - 20.01 ml to 30.00 ml - 30.01 ml to 40.00 ml - 40.01 ml to 50.00 ml - More than 50.00 ml	Php 10.00 Php 20.00 Php 30.00 Php 40.00 Php 50.00 Php 50.00 plus Php 10.00 for every additional 10.00 ml	RA No. 11346

XT170	On vapor products a. Nicotine salt/ salt nicotine - Effective January 27, 2020 - Effective January 1, 2021 - Effective January 1, 2022 - Effective January 1, 2023	Php 37.00 per ml Php 42.00 per ml Php 47.00 per ml Php 52.00 per ml	RA 11467
XT180	b. Conventional 'freebase' or 'classic' nicotine - Effective January 27, 2020 - Effective January 1, 2021 - Effective January 1, 2022 - Effective January 1, 2023	Php 45.00 per 10 ml Php 50.00 per 10 ml Php 55.00 per 10 ml Php 50.00 per 10 ml	
XT190	Inspection Fee a. Heated tobacco products	Php 0.10 per 1000 unit of heated tobacco products	RA 11346
XT200	b. Vapor products	Php 0.01 per milliliter	

# BIR Issuances



> BIR Issuances  
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## Modified ATCs to reflect the new excise tax rates:

ATC	Description	Tax Rate	Legal Basis
XT010	<p>Tobacco products</p> <p>a. Tobacco twisted by hand or reduced into a condition to be consumed in any manner other than the ordinary mode of drying and curing</p> <ul style="list-style-type: none"> <li>- Effective January 1, 2020</li> <li>- Effective January 1, 2021</li> <li>- Effective January 1, 2022</li> <li>- Effective January 1, 2023</li> </ul> <p>b. Tobacco prepared or partially prepared with or without the use of any machine or instrument or without being pressed or sweetened</p> <ul style="list-style-type: none"> <li>- Effective January 1, 2020</li> <li>- Effective January 1, 2021</li> <li>- Effective January 1, 2022</li> <li>- Effective January 1, 2023</li> </ul> <p>c. Fine-cut shorts and refuse, scraps, clippings, cuttings, stems, midribs and sweepings of tobacco</p> <ul style="list-style-type: none"> <li>- Effective January 1, 2020</li> <li>- Effective January 1, 2021</li> <li>- Effective January 1, 2022</li> <li>- Effective January 1, 2023</li> </ul>	<p>Php 2.31/kg Php 2.40/kg Php 2.50/kg Php 2.60/kg</p> <p>Php 2.31/kg Php 2.40/kg Php 2.50/kg Php 2.60/kg</p> <p>Php 2.31/kg Php 2.40/kg Php 2.50/kg Php 2.60/kg</p>	RA No. 10351 and RR 17-2012

XT020	<p>Chewing tobacco unsuitable for use in any other manner</p> <ul style="list-style-type: none"> <li>- Effective January 1, 2020</li> <li>- Effective January 1, 2021</li> <li>- Effective January 1, 2022</li> <li>- Effective January 1, 2023</li> </ul>	<p>Php 1.97/ kg Php 2.05/ kg Php 2.13/ kg Php 2.22/ kg</p>	RA No. 10351 and RR 17-2012
XT035	<p>Cigars</p> <p>d. Ad valorem tax based on net retail price [NRP] per cigar [excluding the excise and VAT]</p> <ul style="list-style-type: none"> <li>- Effective January 27, 2020</li> <li>- Effective January 1, 2021</li> <li>- Effective January 1, 2022</li> <li>- Effective January 1, 2023</li> </ul>	<p>20% NRP/ cigar 20% NRP/ cigar 20% NRP/ cigar 20% NRP/ cigar</p>	RA 11346 XT040
XT036	<p>e. Specific tax</p> <ul style="list-style-type: none"> <li>- Effective January 2, 2020</li> <li>- Effective January 1, 2021</li> <li>- Effective January 1, 2022</li> <li>- Effective January 1, 2023</li> </ul>	<p>Php 6.57/ cigar Php 6.83/ cigar Php 7.10/ cigar Php 7.38/ cigar</p>	
XT040	<p>Cigarettes</p> <p>Cigarettes packed by hand</p> <ul style="list-style-type: none"> <li>- Effective January 2, 2020</li> <li>- Effective January 1, 2021</li> <li>- Effective January 1, 2022</li> <li>- Effective January 1, 2023</li> </ul>	<p>Php 45.00/ pack Php 50.00/ pack Php 55.00/ pack Php 60.00/ pack</p>	RA 11346



# BIR Issuances

## Revised policy on inventory destruction/ disposal

(Revenue Memorandum Order No. 21-2020, issued on July 10, 2020)

The BIR issued the following revised and updated policies and guidelines in the conduct of inspection and supervision of the destruction/disposal of the inventories, machineries or equipment in relation to determination of deductible expense on assets declared as waste or obsolete.

- The “Application for Destruction/ Disposal of Goods/ Assets”, together with the complete documentary requirements, shall be filed with and processed by the LT’s office or RDO where the principal place of business of the taxpayer is registered at least 7 days before the date of destruction/ disposal.

- Below are the documents required:

- a. Sworn Declaration of Goods/Assets as Waste or Obsolete (Annex “D”), including the statement that the loss in value of these goods is subject neither to subsequent replacement/payment by the supplier thereof nor to reimbursement from any insurance company;
- b. List of Goods/Assets for Destruction/ Disposal or List of Machineries/ Equipment for Destruction/Disposal, as the case may be;

- c. Letter of intent that he is considering to avail the services of a third party as witness in the process of destruction/ disposal and providing the name thereof.
- 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

- The BIR shall inform the taxpayer-applicant within 5 days from receipt of application as to the approved manner of witnessing and schedule of destruction/ disposal.

- BIR now allows a third party to witness the destruction/ disposal of inventory assets (physical witnessing or virtual means). If the method approved is through a third party, the BIR shall issue a letter to the third party through the taxpayer within the same period.

- All expenses incidental to the witnessing shall be for account of the taxpayer.

- The date of the destruction shall be schedule on regular working days, unless otherwise approved by the BIR.

- In the event that the destruction/ disposal activity cannot be completed in one day, the same may be schedule in a manner acceptable to both the taxpayer and the BIR.

- The Certificate for Deductibility of Goods/ Assets Destroyed/ Disposed shall be issued by the BIR within 5 days from the date of submission by the taxpayer of the complete documents (e.g. photos and videos, inventory count sheet, etc.) of destruction/ disposal.

## ATRIGs for VAT exempt importations shall now be issued by the RDO having jurisdiction over the port of entry

(Revenue Memorandum Order No. 23 and 25-2020, issued on July 15, 2020 and 29, 2020)

Authority to Release Imported Goods (ATRIG) for importation of all articles exempt from VAT shall now be processed and issued by the RDO having jurisdiction over the port of entry of the imported articles. This includes the application for ATRIG by the manufacturers, distributors, wholesalers and retailers of VAT exempt drugs and medicines included in the “list of approved drugs and medicines” issued by the Department of Health (DOH) under Revenue Regulations No. 18-2020.

Previously, ATRIGs for VAT exempt importations are processed by RDO No. 33 – Intramuros – Ermita -Malate.





# BIR Issuances

## **Revised procedures on the cancellation of PTUs/ CRMs/ POS machines, and other similar receipts/invoices generating machines**

(Revenue Memorandum Circular No. 69-2020, issued on July 13, 2020)

The BIR streamlined the existing procedures on the cancellation of PTUs/ CRMs/ POS machines, and other similar receipts/invoices generating machines.

Taxpayers shall notify the concerned RDO/ LT office, in writing, on their request for cancellation of the Permit-to-use (PTU) within 5 days from the date the machine was last used/ withdrawn from use. The reasons for the cancellation must be stated in the notice. The required documentary requirements shall be submitted as attachment to the letter-notice or to the assigned revenue officer at the time of machine inspection.

Actual inspection of the CRM/POS shall be mandatory in case of its withdrawal from use or its transfer to another branch or company.

In case of withdrawal from use or transfer of the Cash Register Machines (CRM)/ Point-of-Sale Machines (POS) to another branch of the taxpayer, the assigned revenue officer (RO) shall conduct an inspection of the machine and shall perform the following:

- a. For POS: request taxpayer to generate back end report of the machine as of the date of inspection and compare with the grand accumulate sales as reflected in the Z-reading as of the last day of use of the machine.
- b. For CRM: check the entries in the cash register sales book if updated (the last entry should be the declared last day of use of the machine).

In case of modification/upgrading of software used, actual inspection of the machine may be dispensed with subject to certain conditions.

The cancellation certification shall be issued within 7 days from the receipt of the letter request of the taxpayer by the concerned RDO/ LT office. In case inspection of machine was dispensed with, the cancellation certificate shall be issued within 3 days from receipt of complete requirement by the RDO/ concerned LT office.

Non-payment of the penalties at the time of the request for cancellation of the PT shall not be a ground for the non-issuance of the Cancellation Certificate.

The above policies, requirements and procedures in RMC 72-2018 shall still apply to machines found during Post-Evaluation to have requested for cancellation of PTU but have not been acted upon by the concerned LT Office/RDO. Otherwise, the provisions on cancellation of PTU under this Circular shall apply.

For new application for PTU through the eAccReg, concerned LT office/ RDO shall approve the application within 3 days from receipt of such application as mandated under the Citizen's Charter of the BIR.



# BIR Issuances

## List of expired TCCs

(Revenue Memorandum Circular No. 70-2020, issued on July 08, 2020)

The BIR circularized the list of expired tax credit certificates (TCCs). Under RR 14-2020, such publication shall be sufficient notice to the concerned taxpayer-owner of the TCC. Any TCC which remains unutilized for more than one (1) year at any given interval of time during its validity shall be converted into cash with prior written notice from the BIR.

Please click link below for the list:

[https://www.bir.gov.ph/images/bir\\_files/internal\\_communications\\_2/RMCs/2020%20RMCs/Annex%20A%201\\_copy.pdf](https://www.bir.gov.ph/images/bir_files/internal_communications_2/RMCs/2020%20RMCs/Annex%20A%201_copy.pdf)

## Revised reportorial requirements for DST exemption on credit extensions and restructurings during ECQ

(Revenue Memorandum Circular No. 72-2020, issued on July 17, 2020)

In relation to DST exemption of credit extensions and credit restructuring during ECQ, covered institutions shall submit a summary listing of all pre-existing loans, pledges and other instruments as of March 17, 2020 which were granted extension payment and/or maturity periods. The hard copy of the summary listing shall now be made under oath as to the completeness, truth and accuracy thereof by a duly authorized officer or representative of the taxpayer, and subject to post audit/

verification by the BIR whether the summary list pertains to qualified loans only.

The photocopies of the documents evidencing credit extensions and restructurings is no longer required to be submitted.

The summary listing shall be submitted to the RDO/ LTS/ LTDO where the taxpayer is registered within 60 days from the lifting of the ECQ.

## Running of Statute of Limitations suspended until 60 days after ECQ

(Revenue Memorandum Circular No. 74 and 77, issued on July 22, 2020 and July 30, 2020)

The running of statute of limitations shall be suspended starting March 16, 2020 until the lifting of the extreme community quarantine (ECQ) and for 60 days thereafter. This shall apply to areas placed under ECQ.

Previously, under RMC No. 34-2020 and subsequent revenue issuances, the running of the statute of limitations is until 60 days after lifting of the state of national emergency and applies nationwide.

## Deadline for registering online businesses extended to August 31, 2020

(Revenue Memorandum Circular No. 75-2020, issued on July 29, 2020)

Under RMC No. 60-2020, all persons doing business and earning income in any manner or form, specifically those into digital transactions through the use of any electronic platforms and media, and other digital means, have been allowed to register their businesses and pay taxes on past transactions without penalty. From the previous deadline of July 31, 2020, such sellers are now given until August 31, 2020 to register and pay taxes.





# BIR Issuances

## Clarifications on the submission of BIR Form 1709 and attachments

(Revenue Memorandum Circular No. 76-2020, issued on July 29, 2020)

The BIR issued RMC 76-2020 to clarify issues regarding the submission of Information Return on Transactions with Related Party (BIR Form 1709) and its required attachments, as attachment to the annual income tax return as required under Revenue Regulations (RR) No. 19-2020.

### Purpose of BIR Form 1709

• With the new BIR Form 1709, the BIR will be able to perform transfer pricing risk assessment and decide whether or not to conduct a thorough review/audit of a particular entity or transaction. It will now be easier for the BIR to identify the countries to whom requests for information shall be sent for verification purposes

### Covered taxpayers

- BIR Form 1709 shall 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 separately submit BIR Form 1709 and required attachments.
- BIR Form 1709 is required to be submitted by taxpayers starting with those fiscal year ending March 31, 2020 and succeeding taxable years. Calendar year 2019 and fiscal years ending Jan. 31, 2020 and February 29, 2020 are not covered.

- Taxpayers with fiscal year ending March 31, 2020 who filed their AITR and attachments prior to effectivity of RR No. 19-2020 on July 25, 2020 are still required to submit BIR Form 1709 and its attachments. When submitting the BIR Form 1709, the taxpayer shall attach a photocopy of the filed AITR.
- Taxpayers with fiscal year ending March 31, 2020 are given until September 30, 2020 to prepare, file and submit BIR Form 1709 and its attachments.
- Since non-stock, non-profit corporations are allowed to engage in activities conducted for profit without losing its tax-exempt status, it is also required to submit BIR Form 1709 if it has RPTs.

### Deadline and manner of filing of BIR Form 1709 and attachments

- The deadline for filing of BIR Form 1709 and attachments are as follows:
  - Manual filers: On or before the statutory due date of filing of AITR
  - eFPS filers: 15 days from the statutory due date or actual date of electronic filing of the AITR, whichever comes later.
- BIR Form 1709 shall be manually filed at the LT Division/RDO where the taxpayer is registered.

### Transactions to be disclosed in BIR Form 1709

- The following shall be disclosed in the RPT Form:
  - All RPTs that result in the transfer of resources, services, obligations, irrespective of their arrangement (with cost-recovery/cost-sharing/recharging) and regardless of whether a price is charged

In preparing BIR Form 1709, taxpayers cannot rely entirely on PAS 24 disclosures since the form requires more details which are not usually disclosed in the notes to financial statements such as the taxation aspect or tax treatment and the substance of the RPTs.

- Dividends and redemption of shares between and among related parties

- Tax treaty relief application (TTRA) to be indicated on Part IV of BIR Form 1709 must be those filed with ITAD relative to income payments made by the Philippine taxpayer to its related parties.

### Required attachments to BIR Form 1709

- All taxpayers with RPTs are required to attach a transfer pricing documentation (TPD), local or otherwise, regardless of the amount and the volume of the RPTs.
- The TPD should be prepared prior to or at the time of the transaction, or after the transaction but not later than the date of filing of the AITR covering the transactions.
- TPD should be updated if there are significant changes in the business model, the factors or conditions considered in drafting the TPD, and nature of the RPTs.
- Taxpayers may use the TPD of their parent companies, TPD of other transacting related party, or master file of the group, provided that the taxpayer relied upon such TPD in determining the transfer price. However, local file is preferred.



# BIR Issuances

- For cost-sharing arrangements, submission of a formal written arrangement/contract and other documents to substantiate the same, is required to prove that these are legitimate business expenses.
- All contracts are required to be attached, regardless of volume. In lieu of submission of hard copies, scanned copies may be submitted.
- Any taxes paid to a foreign country must be declared in, and the proof of payment thereof must be attached to the BIR Form 1709. Proof of payment of foreign taxes or copy of foreign ruling duly issued by relevant foreign tax authority must be duly authenticated and apostilled.

## **Penalties for non-filing of BIR Form 1709 and attachments**

- A penalty of not less than P1,000 but not more than P25,000 shall be imposed for failure to file BIR Form 1709 and its required attachments due to reasonable cause and not willful neglect.
- In case of repetition of offense, the maximum penalty of P25,000 shall be imposed.
- If after receiving valid summons to produce the form and attachments, and the taxpayer still fails to neglects to produce the same, the responsible officers shall be punished by a fine of not less than P5,000 but not more than P10,000 and suffer imprisonment of not less than 1 year but not more than 2 years.

For other clarifications on the submission of BIR Form 1709 and required TPD, see full text of RMC No. 76-2020.

# Supreme Court Decisions



> BIR Issuances  
> Supreme Court  
Decision

## **120-day period for the BIR to act on refund application starts upon submission of complete supporting documents**

(Commissioner of Internal Revenue vs Chevron Holdings, Inc., GR No. 233301, February 17, 2020)

Settled is the rule that it is only upon the submission of complete documents in support of the application for tax credit/refund that the 120-day period begins to run.

In this case, the BIR contends that the judicial claim for refund was prematurely filed because the 120-day period has not yet commenced on account of the taxpayer's submission of incomplete supporting documents. The SC agreed that the 120 day period shall be counted from submission of complete supporting documents. To determine whether the taxpayer has submitted the complete supporting documents, SC noted that the taxpayer submitted all documents it deemed necessary for the grant of its refund claim and even authorized the examination of the voluminous supporting documents kept in its office and grant revenue officers access thereto. Also, the BIR no longer notified the taxpayer of the document it failed to submit, if any.

Hence, it was ruled that without the notification by the BIR of the need to submit additional supporting documents to substantiate the claim for refund, the documents submitted are deemed complete and sufficient and the 120-day period starts to run on the date of submission thereof.

# Highlight on P&A Grant Thornton services

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We welcome your suggestions and feedback so that the Tax brief may be made even more useful to you. Please get in touch with us if you have any comments and if it would help you to have the full text of the materials in the Tax brief.

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