

## Advisory on BIR Form 1709 and the Transfer Pricing Documentation

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REVENUE MEMORANDUM CIRCULAR  
NO. 54-2021  
Clarifies Certain Provisions of Revenue  
Regulations No. 34-2020

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**BUREAU OF INTERNAL REVENUE**  
**REVENUE MEMORANDUM CIRCULAR**  
**NO. 54-2021**

**Clarifies Certain Provisions of Revenue Regulations No. 34-2020**

**Q1: Who are required to accomplish and file an RPT Form?**

A taxpayer is required to file an RPT Form if **ALL** the following conditions are present:

It is required to file an Annual ITR

It has transactions with a domestic or foreign related party during the taxable year

It falls under any of the following:

- a. Large taxpayers
- b. Taxpayers enjoying tax incentives
- c. Taxpayers reporting net operating losses for the current and immediately preceding 2 taxable years
- d. Related party with transactions with a, b, and c

**Q2: Who is a large taxpayer?**

A large taxpayer is a taxpayer who has been **classified and duly notified** by the Commissioner of Internal Revenue for having satisfied any or a combination of set criteria as prescribed in RR No. 1-98, as amended. Notification may be made via registered mail, publication, or any other mode of service.

A taxpayer who meets any of the set criteria but was not notified cannot be considered a large taxpayer.

**Q3: Who are taxpayers subject to preferential income tax rate?**

*Rule:* In determining whether a taxpayer is subject to preferential tax rate, reference must be made on how these taxpayers are **taxed as a whole and not on a per transaction basis**.

Taxpayers enjoying tax incentives include, but are not limited to, the following:

- Proprietary educational institutions and hospitals;
- Regional operating headquarters; and
- International carriers, provided:
  - If subject to preferential rate under Section 28(A)(3) of the 1997 NIRC, as amended, (Gross Philippine Billings on gross revenues), or a relevant ta treaty - **NOT REQUIRED TO FILE BIR FORM 1709**; or
  - If subject to tax on their profits from sources within the Philippines - **REQUIRED TO FILE BIR FORM 1709**.

**Q4: If the taxpayer operating within the economic zone is subject to RCIT, is it require to file BIR Form 1709?**

*General Rule:* No. Only those **enjoying** tax incentives with respect to income tax are required to file BIR Form 1709.

*Exception:* If the taxpayer also falls under Section 2(a), (c), or (d) of RR No. 34-2020<sup>1</sup>

**Q5: Is a tax-exempt corporation required to file an RPT Form? How about a post-employment benefit plan?**

<p>Tax-exempt Entities:</p> <ul style="list-style-type: none"> <li>➤ Taxpayers exempt from tax under Section 30 or other similar provisions of the 1997 NIRC, as amended;</li> <li>➤ Taxpayers exempt from tax under special laws;</li> <li>➤ Regional headquarters;</li> <li>➤ Representative offices of foreign corporations.</li> </ul>	<p>Not required to file BIR Form 1709</p>
<p>Post-employment benefit plans whose RPTs consist only of contributions from their sponsor employers</p>	

<sup>1</sup> Large taxpayers, Taxpayers reporting net losses for the current and immediately preceding 2 taxable years, or Related Parties having transactions with those required to file BIR Form 1709.

**Q6: What does the term “net operating losses” mean?**

The net operating losses for **income tax purposes**, as provided for under Section 34(D)(3) of the 1997 NIRC, as amended, should be the basis and not the amount in the AFS.

**Q7: Should BIR registration fees, business permit, and real estate taxes paid for ordinary assets be considered in determining net operating losses?**

*General Rule:* Yes.

*Exception:* Those enumerated under Section 34(C)(1) of the 1997 NIRC, as amended, are not to be considered in computing net operating losses

**Q8: If a domestic party had transactions with a nonresident foreign related party that reported net operating losses for the current taxable year and the last two preceding taxable years, is the former required to file BIR Form 1709?**

No. In applying Section 2(d) of RR No. 34-2020, the transacting taxpayer must verify first if its related party is required to file BIR Form 1709 for falling under categories “a” to “c”.

**Q9: Is there a materiality threshold for reportable related party transactions?**

No. A taxpayer must **disclose all RPTs irrespective of the amount**. The materiality threshold is relevant only in determining who are required to prepare a TPD.

**Q10: In filling out BIR Form 1709, would it be possible to report a lump-sum amount and not on a per transaction basis?**

If possible, **similar transactions with the same related party must be aggregated**.

**Q11: What do we have to attach when filing BIR Form 1709?**

None. The Transfer Pricing Documentation and other supporting documents shall not be attached to the BIR Form 1709 but shall instead be made available during audit.

**Q12: Is a reasonable estimate of the related party transactions sufficient?**

No. **Actual amounts shall be declared.** The BIR Form 1709 contains a perjury clause which requires the taxpayer or its duly authorized representative to attest to the truthfulness of the facts stated therein.

**Q13: The short period return was supposed to be filed on December 15, 2020 but the filing thereof was extended by law or revenue issuances until January 31, 2021. Should the BIR Form 1709 accompany such short period return?**

No. The filing of BIR Form 1709 is mandatory only for short period returns originally required to be filed in 2021 and subsequent years.

**Q14: Suppose A Co. is not required to file BIR Form 1709 but has satisfied the materiality thresholds under Section 3 of RR No. 34-2020. Is it required to prepare a TPD?**

Sections 2 and 3 of RR No. 34-2020 are interrelated. If the taxpayer is not required to file BIR Form 1709, then it is also not mandated to prepare a Transfer Pricing Documentation. However, nothing prevents a taxpayer from preparing a Transfer Pricing Documentation and presenting the same during audit to prove that its RPTs were conducted at arm's length.

**Q15: Who are required to prepare a Transfer Pricing Documentation?**

Preparation of the Transfer Pricing Documentation shall be mandatory if the taxpayer meets any of the following conditions:

<p>Annual gross revenue exceeding P150,000,000.00</p> <p style="text-align: center;">and</p> <p>Total amount of related party transactions with foreign and domestic related parties exceeds P90,000,000.00</p>	<b>OR</b>	<p>Aggregate amount of related party transactions involving:</p> <ul style="list-style-type: none"> <li>➤ Sale of tangible goods to the <b>same related party</b> exceeding P60Million</li> <li>➤ Service transaction, payment of interest, utilization of intangible goods, or other RPTs with the <b>same related party</b> exceeding P15Million</li> </ul>
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Submission of TPD is also required if during the immediately preceding taxable period the above thresholds were exceeded.

**Q16: What is the difference between the related party transactions under Section 3(a) and (b) of RR No. 34-2020?**

Section 3(a)	Refer to transactions involving <b>all related parties</b> in general
Section 3(b)	Refer to transactions with a <b>specific related party</b>

**Q17: Does the term “annual gross sales/revenues” pertain to the combined revenue from related party and third-party transactions?**

Yes. The use of the term is irrespective of the source and identity of the other party to the transaction.

**Q18: In computing the volume of related party transactions, does the taxpayer have to sum up the amounts received or paid with the outstanding receivable/payable? Should this be read as amounts that hit the income statement in addition to outstanding balances?**

In computing the total amount of related party transactions, the following items shall be totalled:

- Amounts received and/or receivable (trade) from related parties during the taxable year;
- Amounts paid and/or payable (trade) to related parties during the taxable year; less any
- Outstanding balances of loans and non-trade amounts due from/to all related parties.

Compensation paid to KMPs, dividends, and branch profit remittance shall not be included in the computation.

**Q19: What are included in the phrase “other related party transaction”?**

It includes all other RPTs not specifically enumerated in Section 3(b) of RR No. 34-2020.

**Q20: Should share in the net income from associates or JVs be disclosed in the RPT Form?**

No since these are akin to dividends.

**Q21: What is the effect of failure to supply material information?**

The BIR will regard the BIR Form 1709 as **not duly filed** and the penalty for failure to file such information return will be imposed.

**Q22: What currency should be used in accomplishing the RPT Form and in preparing a Transfer Pricing Documentation?**

In general, the BIR Form 1709 requires the amount in foreign currency and its equivalent in local currency. However, if it seems impractical due to the use of several currencies, the equivalent in the local currency should be disclosed. In all cases, the exchange rates at the transaction date should be used.

The same rule applied to the preparation of a Transfer Pricing Documentation.

**Q23: What are the incentives for taxpayers that complied with the requirements under RR No. 34-2020? Will they not be subjected to audit?**

The BIR will conduct an initial transfer pricing risk assessment, identify high-risk taxpayers, and make an informed decision whether or not to conduct a transfer pricing audit of a particular entity or transaction.

This notwithstanding, the BIR still retains the right to conduct transfer pricing audit against taxpayers with RPTs, irrespective of whether or not they are required to file BIR Form 1709 or prepare a Transfer Pricing Documentation.

**Q24: In order for the related party transactions covered by an Advance Pricing Agreement (APA) to be exempt from disclosure in the RPT Form, does the APA need to be approved by the BIR?**

Yes. Further, the BIR is not obliged to accept any unilateral APAs entered into by a foreign taxpayer and the tax authority of the country of residence of such foreign taxpayer.

**Q25: Is the required disclosure under Section 4 of RR No. 34-2020 applicable to taxpayers who are not required to file an RPT Form and have already finalized their AFS for 2020 prior to its effectivity?**

No. These taxpayers are not expected to comply with the mandate of Section 4 of RR No. 34-2020<sup>2</sup> and cannot, therefore, be penalized for non-disclosure. Section 4 of RR No. 34-2020 only applied to AFS that are required to be submitted after the effectivity of RR No. 34-2020.

**Q26: Does RR No. 34-2020 have a retroactive effect?**

No. It shall only apply to RPT Forms that are required to be submitted after its effectivity<sup>3</sup>.

Source:  
*Revenue Memorandum Circular No. 54-2021*

<sup>2</sup> Additional disclosure requirement in the Notes to the Financial Statements for taxpayers with related party transactions  
<sup>3</sup> RR No. 34-2020 took effect immediately after its publication in a newspaper of general circulation on December 23, 2020.