

REVENUE REGULATIONS NO. 19-2020 issued on July 8, 2020 prescribes the use of the new BIR Form No. 1709 (Information Return on Related Party Transactions [Domestic and/or Foreign]), replacing BIR Form No. 1702H, Series of 1992 (Information Return on Transactions with Related Foreign Persons).

For tax purposes, there should be an effective implementation of Philippine Accounting Standards (PAS) 24, Related Party disclosures. Under this PAS, an entity's financial statements shall contain the disclosures necessary to draw attention to the possibility that its financial position and profit or loss may have been affected by the existence of related parties and by transactions and outstanding balances, including commitments, with such parties.

The submission of BIR Form No. 1709 and its supporting documents is required following the guidelines prescribed by the related revenue issuances for the submission of the required attachments to the Annual Income Tax Returns.

Tax examiners are enjoined to conduct a thorough examination of the related party transactions and see to it that revenues are not understated and expenses are not overstated in the financial statements as a result of these transactions.

In determining whether a person or entity is a related party, the following rules shall be considered:

- a. A person or a close member of that person's family is related to a reporting entity if that person:
 - i. has control or joint control of the reporting entity;
 - ii. has significant influence over the reporting entity; or
 - iii. is a member of the key management personnel of the reporting entity or of a parent of the reporting entity.
- b. An entity is related to a reporting entity if any of the following conditions applies:
 - i. The entity and the reporting entity are members of the same group (which means that each parent, subsidiary and fellow subsidiary is related to the others).
 - ii. One entity is an associate or joint venture of the other entity (or an associate or joint venture of a member of a group of which the other entity is a member).
 - iii. Both entities are joint ventures of the same third party.
 - iv. One entity is a joint venture of a third entity and the other is an associate of the third entity.
 - v. The entity is a post-employment benefit plan for the benefit of employees of either the reporting entity or an entity related to the reporting entity. If the reporting entity is itself such a plan, the sponsoring employers are also related to the reporting entity.
 - vi. The entity is controlled or jointly controlled by a person identified in (a).
 - vii. A person identified in (a)(i) has significant influence over the entity or is a member of the key management personnel of the entity (or of a parent of the entity).
 - viii. The entity, or any member of a group of which it is a part, provides key management personnel services to the reporting entity or to the parent of the reporting entity.

In all cases, the substance of relationships between entities shall be taken into account and not merely the legal form. On the other hand, 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. rendering 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 in 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.

The following requirements shall be observed by the taxpayer, who may either be a reporting entity or a related party:

- a. The required disclosures on transactions and outstanding balances shall be made separately for each of the following categories:
 - i. the parent;
 - ii. entities with joint control or significant influence over the entity;
 - iii. subsidiaries;
 - iv. associates;
 - v. joint ventures in which the entity is a joint venturer;
 - vi. key management personnel of the entity or its parent; and
 - vii. other related parties
- b. For each of said category, the following information shall be provided:
 - i. the amount of the transactions;
 - ii. the amount of outstanding balances, including commitments, and their terms and conditions, including whether they are secured, and the nature of the consideration to be provided in settlement, and details of any guarantees given or received;
 - iii. provisions for doubtful debts related to the amount of outstanding balances;
 - iv. the expense recognized during the period in respect of bad or doubtful debts due from related parties

In filling out BIR Form No. 1709, the taxpayer is directed to observe the following:

- a. 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.
- b. The nature of transaction and the accounts affected shall be described in detail.
- c. The "business overview of the ultimate parent company" referred to 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.
- d. The "functional profile" referred to in Part IV(B) of BIR Form No. 1709 shall include a broad description of the business of the taxpayer and the industry in which it operates, and of the business of the related parties with whom the taxpayer has transacted;
- e. The following are required to be attached to BIR Form No. 1709:
 - i. certified true copy of the relevant contracts or proof of transaction;

- ii. withholding tax returns and the corresponding proof of payment of taxes withheld and remitted to the BIR;
 - iii. proof of payment of foreign taxes or ruling duly issued by the foreign tax authority where the other party is a resident; and
 - iv. certified true copy of Advance Pricing Agreement, if any; and
 - v. any transfer pricing documentation.
- f. No spaces shall be left unanswered. If one or some portions are not applicable, such fact shall be so stated.