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TIPS TAX ISSUES AND PRACTICAL SOLUTIONS

1. When is the extended deadline to avail of the benefits of the Bureau of Internal Revenue's Voluntary Assessment and Payment Program for Taxable Year 2018 (VAPP)?

The Bureau of Internal Revenue (*BIR*) has issued Revenue Regulations No. 33-2020 (*RR No. 33-20*) which extends the period for availment of the benefits of the *Voluntary Assessment and Payment Program for Taxable Year 2018 under Certain Conditions (VAPP)* until **June 30, 2021**, unless extended further by the Secretary of Finance.

The VAPP was originally set to expire on December 31, 2020 under Revenue Regulations No. 21-2020 (*RR No. 21-20*). It is a program promulgated by the Secretary of Finance to encourage voluntary tax compliance in light of the COVID-19 pandemic and the need to maximize revenue collection for the Government.

Under the VAPP, taxpayers may pay "all internal revenue taxes covering the taxable year ending December 31, 2018, and fiscal year 2018 ending on the last day of the months of July 2018 to June 2019." It covers income tax, percentage tax, excise tax, documentary stamp tax, value-added tax, final withholding tax, creditable withholding tax (*CWT*), and taxes on one-time transactions, such as estate tax, donor's tax, and capital gains tax. Please see our November TIPS at <https://tinyurl.com/SyCipLaw-NovTIPS-Vol5> for more information on the VAPP.

2. What are the amendments to the VAPP under RR No. 33-20?

RR No. 33-20 amends Section 10 (Privilege) of RR No. 21-20 by providing that taxpayers who avail themselves of the VAPP on withholding taxes shall be allowed to claim deductions on the corresponding income payment pursuant to Revenue Regulations No. 6-2018 (*RR No. 6-18*). RR No. 6-18 provides the requirements for deductibility of certain expenses from a taxpayer's gross income.

RR No. 33-20 also identifies a Discrepancy Notice and other third party information documents as examples of documents to support a finding of under-declaration of sales, receipts or income or overstatement of deductions by more than 30% for purposes of overturning a Certificate of Availment of the VAPP.

SyCipLaw TIP 1:

Taxpayers now have until the extended deadline of June 30, 2021 to avail themselves of the benefits of the VAPP.

**SyCip Salazar
Hernandez & Gatmaitan**

Managing Partner:

Hector M. de Leon, Jr.

Tax Department Head:

Carina C. Laforteza

Tax Department Partners:

Carlos Roberto Z. Lopez
Ramon G. Songco
Benedicto P. Panigbatan
Russel R. Rodriguez
Ronald Mark C. Llano
Hiyasmin H. Lapitan
Leah C. Abutan
John Christian Joy A. Regalado

Of Counsel:

Rolando V. Medalla, Jr.

Tax Department

Senior Associates:

Joanna Marie O. Joso
Maria Viola B. Vista-Villaroman
Maria Christina C. Ortua-Ang
Austin Claude S. Alcantara
Mark Xavier D. Oyales
Camille Angela M. Espeleta-Castillo

Tax Department Associates:

Spencer M. Albos
Kristina Paola P. Frias
Norberto P. Geraldez
Lyan David M. Juanico
Katherine C. Lee-Bacus
Jemannoel A. Mora
Lois Philippe M. Pelito
Hailin D.G. Quintos
Renz Jeffrey A. Ruiz
Rheland S. Servacio
Elaine O. Wong

Editor:

Ronald Mark C. Llano (Partner)

Contributors:

Austin Claude S. Alcantara
Kevin Joseph C. Berbaño

Coordinators:

Angelita O. Dizon
Monique Galza

For more information regarding the issuances discussed in this briefing, please contact:

Carina C. Laforteza
cclaforteza@syciplaw.com

In addition, RR No. 33-20 provides that “no denial of application or invalidation of a previously issued Certificate of Availment shall be valid unless the taxpayer is formally notified by the Division Chief (LT Office) or the Revenue District Officer where the taxpayer is registered, stating the factual reasons” for the denial. The taxpayer can appeal the said denial or invalidation to the Assistant Commissioner – Large Taxpayer Service (ACIT-LTS) or Regional Director (RD) within 30 days from receipt of the notice of denial.

SyCipLaw TIP 2:

Payment of CWT under the VAPP will entitle a taxpayer to claim a tax deduction. Taxpayers now have recourse to the ACIT-LTS or RD in the event that their application is denied or their Certificate of Availment is invalidated. Until they actually receive a formal notice for the denial or invalidation of their Certificate of Availment, they can insist on the validity of their Certificate of Availment.

SyCipLaw TIP 3:

Taxpayers must revisit RR No. 4-19 to check if they fall under any of the instances which allows them to avail of the tax amnesty on delinquencies. Note that the extended deadline for the tax amnesty on delinquencies, which is June 30, 2021, coincides with the extended deadline of the VAPP for the 2018 taxable year.

3. When is the new deadline to avail of the Tax Amnesty on Delinquencies?

The BIR has issued Revenue Regulations No. 32-2020 (RR No. 32-20), which amends Section 3 of Revenue Regulations No. 04-2019 (RR No. 4-19) by further extending the period to avail of the tax amnesty on delinquencies which is provided under Republic Act No. 11213 (RA No. 11213 or the Tax Amnesty Act) to **June 30, 2021**. The tax amnesty under RA No. 11213 covers: [a] estate taxes; and [b] delinquencies. For more information, please see our bulletin on RR No. 4-19 at <https://tinyurl.com/SyCipLaw-BulletinRR4-19>, which was posted on April 22, 2019.

Under RR No. 4-19, the deadline for the availment of the tax amnesty was April 24, 2020.

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4. What version of BIR Form No. 1709 (Information Return on Transactions with Related Party) must be submitted under Revenue Regulations No. 34-2020?

The BIR has now issued Revenue Regulations 34-2020 (*RR No. 34-20*) to streamline the guidelines and procedures for the submission of BIR Form No. 1709 (or the *RPT Form*), Transfer Pricing Documentation (*TPD*), and other supporting documents originally provided by Revenue Regulations No. 19-2020 (*RR No. 19-20*).

RR No. 19-20 had prescribed the use of BIR Form No. 1709, which is the Information Return on Transactions with Related Party (Foreign and/or Domestic), replacing BIR Form No. 1702H.

The purpose of requiring taxpayers to submit BIR Form No. 1709 is to allow the BIR to verify that taxpayers are reporting their related party transactions at arm's length prices.

The simplified version of the RPT Form (BIR Form No. 1709), issued along with RR No. 34-20, shall be used in lieu of the old form.

SyCipLaw TIP 4:

Make sure to use the latest version of BIR Form No. 1709 (Information Return on Transactions with Related Party).

SyCipLaw TIP 5:

Taxpayers should note that KMP are no longer required to file and submit BIR Form No. 1709 (Information Return on Transactions with Related Party). KMP are also not required to report any transaction between them and the reporting entity/parent company of the latter in BIR Form No. 1709.

5. Who are required to submit BIR Form No. 1709 (Information Return on Transactions with Related Party) together with their annual income tax returns?

Under RR No. 34-20, the following are required to submit BIR Form No. 1709, together with their Annual Income Tax Returns (*AITRs*):

- a. Large Taxpayers;
- b. Taxpayers enjoying tax incentives (i.e., Board of Investments-registered and economic zone enterprises, those enjoying income tax holidays or subject to preferential income tax rate);
- c. Taxpayers reporting net operating losses for the current taxable year and the immediately preceding two (2) consecutive taxable years; and
- d. A related party, as defined under RR No. 19-20, which has transactions with (a), (b), or (c) above. For this purpose, key management personnel (*KMP*), as defined under Section 3(7) of RR No. 19-20, shall no longer be required to file and submit the RPT Form, nor shall there be any requirement to report any transaction between KMP and the reporting entity/parent company of the latter in the RPT Form.

RR No. 19-20 defines KMP as “those persons having authority and responsibility for planning, directing and controlling the activities of the entity, directly or indirectly, including any director (whether executive or otherwise) of that entity.”

6. Who are required to prepare and submit transfer pricing documentation based on the amendments under RR No. 34-20?

RR No. 34-20 has amended RR No. 19-20 to provide that the following taxpayers who are required to submit BIR Form No. 1709 (Information Return on Transactions with Related Party) [***Please see above TIP***] and who meet the materiality thresholds set out below are required to prepare and submit TPDs under Revenue Regulations No. 02-2013:

- a. Annual gross sales/revenue for the subject taxable period exceeding One Hundred Fifty Million Pesos (PhP150,000,000.00) and the total amount of related party transactions with foreign and domestic related parties exceeds Ninety Million Pesos (PhP90,000,000.00)

In computing the above threshold, the following items shall be included:

- i. Amounts received and/or receivable from related parties or paid and/or payable to related parties during the taxable year but excluding compensation paid to key management personnel, dividends, and branch profit remittances; and
- ii. Outstanding balances of loans and non-trade amounts due from/to all related parties.

Related party transactions covered by an Advance Pricing Agreement need not be disclosed in the RPT Form but shall nonetheless be included in the computation of the amount of related party transactions following the prescribed formula; or

- b. Related party transactions meeting the following materiality thresholds:
 - i. If involving sale of tangible goods in the aggregate amount exceeding Sixty Million Pesos (Php60,000,000.00) within the taxable year;
 - ii. If involving service transaction, payment of interest, utilization of intangible goods or other related party transaction in the aggregate amount exceeding Fifteen Million Pesos (Php15,000,000.00) within the taxable year; or

If TPD was required to be prepared during the immediately preceding taxable period for exceeding either (a) or (b) above, then TPD must also be prepared for the current year.

Under the amendments made by RR No. 34-20, the relevant taxpayers are no longer required to attach the TPDs and other supporting documents to BIR Form No. 1709, as set out in RR No. 19-20. However, the said taxpayers must submit these documents within 30 calendar days upon receipt of a request from the BIR Commissioner or his duly authorized representatives, pursuant to a duly issued Letter of Authority covering all internal revenue taxes, subject to a non-extendible period of 30 calendar days based on meritorious grounds.

SyCipLaw TIP 6:

While certain taxpayers are required to submit BIR Form No. 1709, not all of them are required to prepare and submit the TPDs. Those required to prepare and submit the TPDs are not required to attach them to BIR Form No. 1709. While there is also no longer any need to attach the supporting documents identified in RR No. 19-20 when submitting BIR Form No. 1709 (Information Return on Transactions with Related Party), taxpayers must be prepared with the TPDs and supporting documents because they may be required to submit the same in case of an audit by the BIR.

SyCipLaw TIP 7:

Taxpayers must remember that even if they are not required to submit BIR Form No. 1709 (Information Return on Transactions with Related Party), they are still required to make a declaration to such effect in their Notes to the Financial Statements.

7. What are the additional disclosure requirements under RR No. 34-20 for taxpayers with related party transactions but are not required to submit BIR Form No. 1709 (Information Return on Transactions with Related Party)?

Taxpayers who are not required to submit BIR Form No. 1709 are nonetheless required to disclose in their Notes to the Financial Statements that they are not covered by the requirements and procedures for related party transactions, based on RR No. 34-20. This requirement is in addition to those under Revenue Regulations No. 21-2002 (*RR No. 21-02*), as amended by Revenue Regulations No. 15-2010. RR No. 21-02 provides the contents and format of financial statements to be attached to AITRs or Information Returns for tax exempt persons.

Any violation of RR No. 34-20 shall be subject to the penalties provided in Sections 250, 266, and other relevant provisions of the National Internal Revenue Code, as amended.