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# ***Updates on Transfer Pricing Compliance Requirements***

## **BIR FORM 1709**

### **Who is required to file BIR Form 1709?**

Large Taxpayers

Taxpayers enjoying tax incentives

Taxpayers reporting net operating losses for the current taxable year and the immediately preceding two (2) taxable years

A related party with transactions with those enumerated above...

- KMPs shall not be required to submit Form 1709
- No requirement to report any transaction between KMP and the reporting entity in the latter's Form 1709

## **BIR FORM 1709**

### **What about taxpayers not required to file BIR Form 1709?**

In addition to the requirement under RR No. 21-2002, as amended by RR No. 15-2010, to disclose in the Notes to the Financial Statements to the taxes, duties, and license fees paid or accrued during the taxable year, the taxpayer **not required to file BIR Form 1709** shall likewise disclose in the Notes to the Financial Statements that they are not covered by the requirements and procedures for related party transactions provided under RR No. 34-2020

## **BIR FORM 1709**

### **When should BIR Form 1709 be filed?**

**Annual Income Tax Return**

**For FY March 31, 2020 and April 30, 2020**

**For FY May 31, 2020 and June 30, 2020**

**For FY July 31, 2020 and August 31, 2020**

**For FY September 30, 2020  
and October 31, 2020**

**For FY November 30, 2020  
and CY December 31, 2020**



**Extended Deadline**

**Until December 29, 2020**

**Until January 31, 2021**

**Until March 1, 2021**

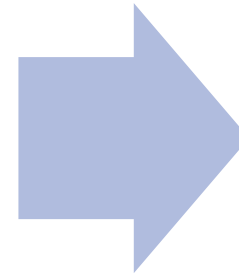
**Until March 31, 2021**

**Until April 30, 2021**

## **BIR FORM 1709**

### When should BIR Form 1709 be filed?

Short Period Annual Income Tax Return  
(filed in 2021 and subsequent years)



BIR Form 1709 shall still  
be accomplished  
**regardless** of the reason  
for the filing of the short  
period returns

## BIR FORM 1709

### How should BIR Form 1709 be filed?



## **BIR FORM 1709**

### **What changes were introduced in the simplified version of BIR Form 1709?**

	<b>Old Version</b>	<b>Simplified Version</b>
As to the disclosure requirements under "Part II" of BIR Form 1709	Requires the enumeration of the RPTs involving foreign and domestic related parties with their respective amounts and taxes withheld	Enumeration of the RPTs involving foreign and domestic related parties with their respective amounts and taxes withheld <b>OMITTED</b>



## **BIR FORM 1709**

### **What changes were introduced in the simplified version of BIR Form 1709?**

	<b>Old Version</b>	<b>Simplified Version</b>
As to the disclosure requirements under "Part III" of BIR Form 1709	<p>Details of RPTs categorized into transactions with:</p> <ul style="list-style-type: none"><li>➤ Parent</li><li>➤ Entities with joint control or significant influence</li><li>➤ Subsidiary/ies</li><li>➤ Associates</li><li>➤ Joint Ventures</li><li>➤ Key Management Personnel</li><li>➤ Other related parties</li></ul>	<p>Details of RPTs categorized into:</p> <ul style="list-style-type: none"><li>➤ Sale of goods and provision of services</li><li>➤ Purchase of goods and services except those provided by KMPs</li><li>➤ Loans granted to or non-trade receivables from RPs</li><li>➤ Loans received from or non-trade payables to RPs</li><li>➤ Other RPTs</li></ul>

## **BIR FORM 1709**

### What changes were introduced in the simplified version of BIR Form 1709?

	<b>Old Version</b>	<b>Simplified Version</b>
As to the disclosure requirements under "Part III" of BIR Form 1709	Requires disclosure of <b>ALL RPTs</b>	Expressly excludes disclosure of: <ul style="list-style-type: none"><li>➤ Compensation paid to KMP</li><li>➤ Dividends</li><li>➤ Branch Profit Remittance</li></ul>

## **BIR FORM 1709**

### **What changes were introduced in the simplified version of BIR Form 1709?**

	<b>Old Version</b>	<b>Simplified Version</b>
As to the disclosure requirements under "Part IV" of BIR Form 1709	Although supposedly attached to BIR Form 1709, existence of Transfer Pricing Documentation (TPD) is not mentioned in the form itself	Requires that the taxpayer indicate whether a TPD was prepared as prescribed under RR No. 2-2013

## **BIR FORM 1709**

### **What changes were introduced in the simplified version of BIR Form 1709?**

	<b>Old Version</b>	<b>Simplified Version</b>
As to the sworn declaration	Sworn declaration pertains to: <ul style="list-style-type: none"><li>➤ Preparation of BIR Form 1709 in good faith</li><li>➤ Truthfulness and correctness of the disclosures</li><li>➤ Consent of taxpayer to process the information under the Data Privacy Act</li></ul>	Sworn declaration pertains to: <ul style="list-style-type: none"><li>➤ Preparation of BIR Form 1709 in good faith</li><li>➤ Truthfulness and correctness of the disclosures</li><li>➤ Availability of required attachments during audit</li><li>➤ Consent of taxpayer to process the information under the Data Privacy Act</li></ul>

## **BIR FORM 1709**

### **What changes were introduced in the simplified version of BIR Form 1709?**

	<b>Old Version</b>	<b>Simplified Version</b>
As to the signatory	<p>BIR Form 1709 to be signed by both:</p> <ul style="list-style-type: none"><li>➤ Taxpayer, President, Principal Officer, or Authorized Representative; and</li><li>➤ Treasurer or Assistant Treasurer</li></ul>	<p>BIR Form 1709 to be signed by Taxpayer, Authorized Representative, or Tax Agent</p>

## TRANSFER PRICING DOCUMENTATION AND SUPPORTING DOCUMENTS

### What are the materiality thresholds?

Annual gross revenue  
exceeding **P150,000,000.00**

and

Total amount of related party  
transactions with foreign and  
domestic related parties  
exceeds **P90,000,000.00**

**OR**

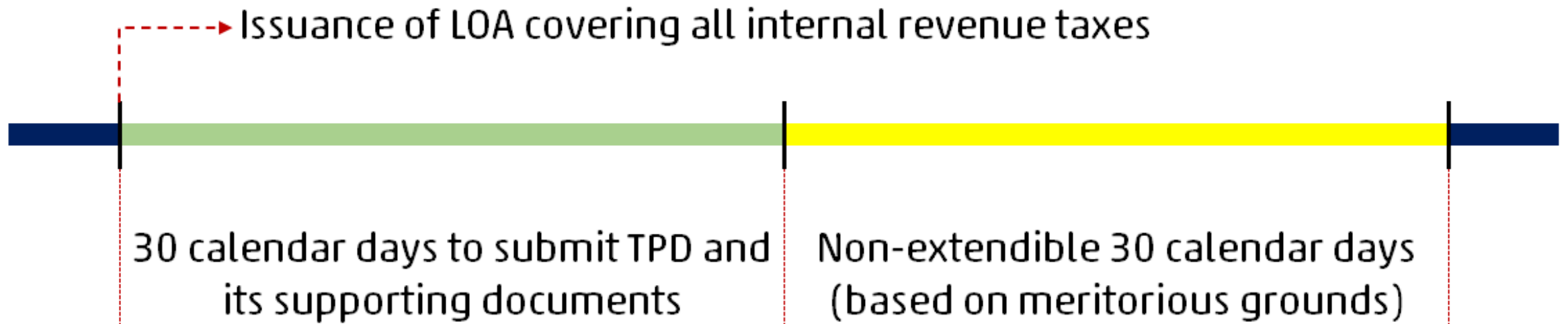
Aggregate amount of related  
party transactions involving:

- Sale of tangible goods  
exceeding **P60,000,000.00**
- Service transaction,  
payment of interest,  
utilization of intangible  
goods, or other RPTs  
exceeding **P15,000,000.00**

**Note:**  
Submission of TPD  
is also required if  
during the  
**immediately  
preceding  
taxable period**  
the above  
thresholds were  
exceeded

## TRANSFER PRICING DOCUMENTATION AND SUPPORTING DOCUMENTS

When to submit TPD and its supporting documents?



**Note:**

TPD and other supporting documents are **not required to be submitted with the BIR Form 1709**

# ***Updates on Important Case Decisions***



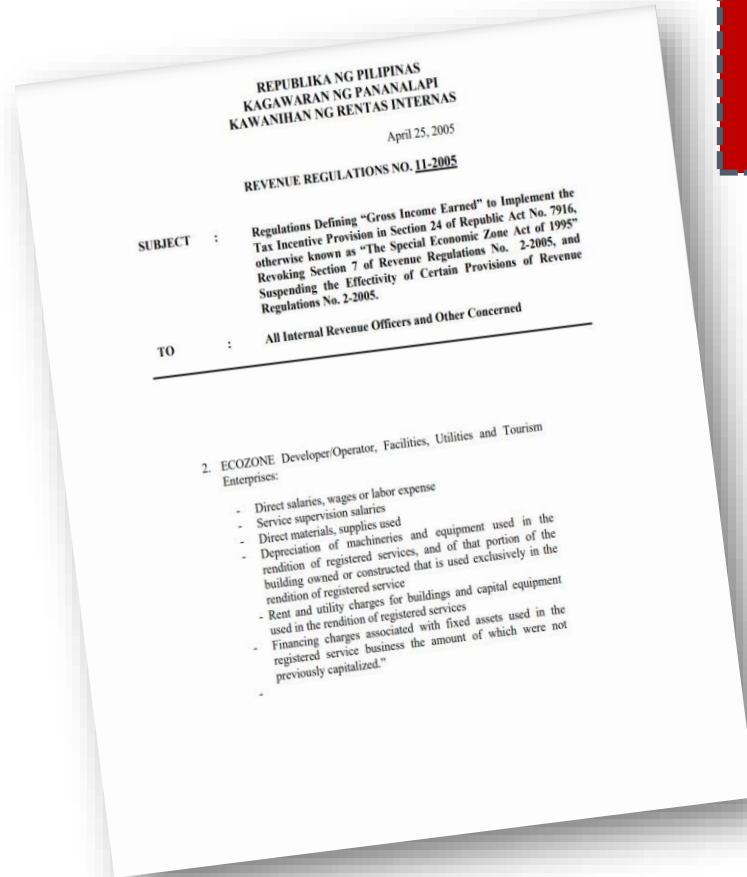
## Supreme Court

***Commissioner of Internal Revenue  
vs. Philex Mining Corporation***  
(G.R. 230016, November 23, 2020)



Subsidiary journals and monthly VAT declarations are **NOT** part of the substantiation requirements that must be complied with to support a claim for VAT refund or credit.

## Supreme Court



### **Commissioner of Internal Revenue vs. East Asia Utilities Corporation (G.R. 225266, November 16, 2020)**

The enumeration under RR 11-2005 of allowable deductions of PEZA entities is not exclusive and was only made by way of example or illustration.

The amendment introduced by RR 11-2005 removed the exclusivity of the enumeration of cost or expense that is allowed as deduction from gross income.

## Supreme Court

***Association of Shipping Line vs.  
Commissioner of Internal Revenue***  
(G.R. No. 222239, January 15, 2020)



Demurrage and detention fees are not deemed within the scope of GPB (2.5% tax) and are therefore subject to VAT and 30% income tax.

## Supreme Court



***Spouses Pacquiao vs.  
The Court of Tax Appeals-First Division, et al.***  
(G.R. No. 213394, April 06, 2016)

The authority of the CTA to issue injunctive writs and to dispense with the payment of the bond is not confined to cases where prescription has set in, but whenever it is determined by the courts that the method employed by the BIR in the collection of the tax is not sanctioned by law. In such case, the bond requirement should be dispensed with

## Supreme Court

### ***Total Philippines Corporation vs. CIR, GR No. 247341***

If you file a claim for vat refund and you have input vat carried over from previous periods, you cannot apply it against the current output vat, unless you are able to substantiate them.



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## Court of Tax Appeals

***Bank of the Philippine Islands vs.  
Commissioner of Internal Revenue***  
(CTA EB No. 2126, December 2, 2020)

Banking institution is the proper payor of the DST as regards to transactions entered into, such as loan agreements.

In case of erroneously filed DST by the other party, the bank has no legal standing to claim for the refund on behalf of the other party.



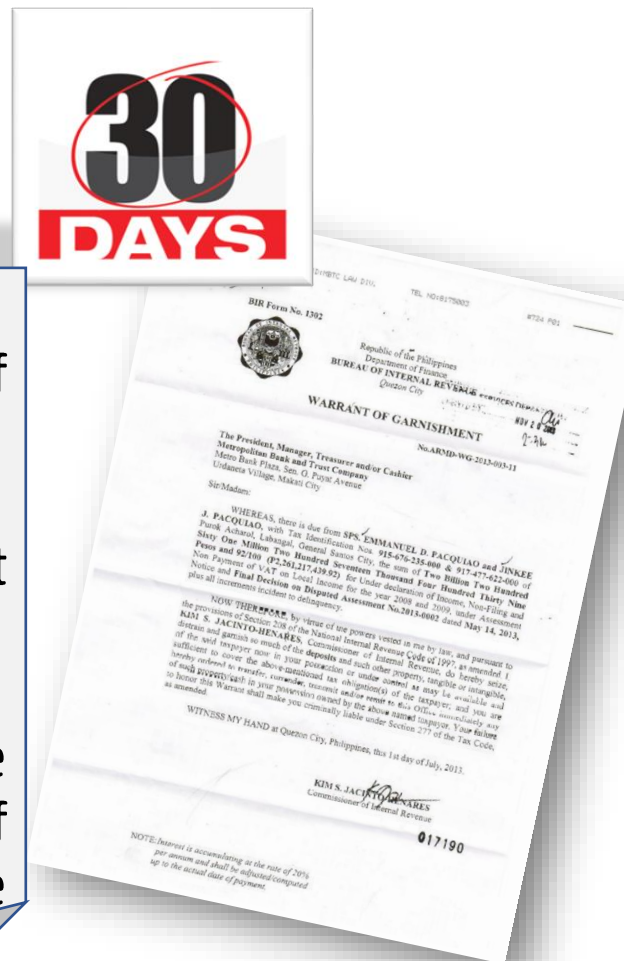
## Court of Tax Appeals

### **Commissioner of Internal Revenue vs. First Balfour, Inc** (CTA EB No. 2116, January 14, 2021)

January 1 - bank notifies taxpayer that there is a warrant of distraint issued against the taxpayer;

January 15 - Taxpayer receives the warrant of garnishment issued by the BIR

The start of counting of the 30-day period to appeal the warrant of garnishment should be from the date of receipt of the warrant by the taxpayer (January 15), and not from the time that the taxpayer was notified by the bank (January 1).



## Court of Tax Appeals

### ***Philippine Airlines, Inc. v. Commissioner of Internal Revenue*** (CTA EB No. 2166, December 11, 2020)

The taxpayer filed a claim for refund before the CIR and the Court of Tax Appeals on the same day.

The filing of the administrative claim before the CIR and petition for review before the CTA on the same day does not constitute "prior filing" set forth under Section 229 of the Tax Code.

The Petition was dismissed.





## Court of Tax Appeals

### ***City Treasurer of Manila vs. New Coast Hotel, Inc.*** (CTA AC No. 231, January 13, 2021)

The local treasurer is required to issue a notice of assessment stating the nature of the tax, fee or charge, the amount of deficiency, the surcharges, interests and penalties under the Local Government Code.



## Court of Tax Appeals

### ***Titanium Corporation vs. Commissioner of Internal Revenue***

(CTA Case No. 9644, November 11, 2020)

The BIR's failure to give reason for rejecting the explanations made by a taxpayer in the Reply to PAN is a clear violation of taxpayer's right to administrative due process.



## Court of Tax Appeals

Level Up, Inc. v. Commissioner of Internal Revenue, CTA EB No.  
2069, January 6, 2021)

Although there was no explanation given by the BIR in the PAN and the FAN, the BIR explained in the FDDA the reasons for the denial of the taxpayer's arguments as well as the results of the reinvestigation. Thus, there was no violation of due process.



## Court of Tax Appeals

*Commissioner of Internal Revenue v. Toledo Power Company, CTA  
EB No. 1990 dated January 12, 2021*

The law merely states that the creditable input VAT should be attributable to the zero-rated or effectively zero-rated sales. The use of the phrase "directly attributable" relates to a situation where the creditable input VAT cannot be directly attributed to any transaction.



## Court of Tax Appeals

*Prime Investment Korea, Inc. v. Commissioner of Internal Revenue,  
CTA EB No. 2129, January 8, 2021*

Income from junket operations is classified as "other related services" and is subject to corporate income tax and not franchise tax.



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## Court of Tax Appeals

*Service Resources, Inc. v. Commissioner of Internal Revenue, CTA  
Case No. 9978, January 4, 2021*

It is not enough that the related income earned or received be declared as part of the gross income. Equally important in claiming the tax credits is proof that the declaration of income earned or received is made in the same period with the claiming of the related tax credit.



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**THANK YOU**