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TAX Advisory

2022-82



BIR GUIDELINES ON IT-BPM SECTOR PENALTY ON VIOLATION OF 30:70 WFH ARRANGEMENT RATIO *(RMC No. 120-2022, in relation to RMC Nos. 23-2022, 39-2022, and FIRB Resolution No. 017-22)*

Dear Valued Clients,

The Bureau of Internal Revenue (BIR) recently issued Revenue Memorandum Circular (RMC) No. 120-2022 which provides additional guidelines and procedures regarding the penalty of Registered Business Enterprises (RBEs) in IT-BPM sector in violation of the work-from-home (WFH) ratio of 30:70 under Fiscal Incentives Review Board (FIRB) Resolution No. 017-22. According to the resolution, the total number of WFH arrangement shall not exceed 30% of the total workforce (Directly or indirectly engaged in the registered project but excluding third-party contractors) while the remaining 70% shall render work or service within the geographical boundaries of the ecozone or freeport

being administered by the Investment Promotion Agencies (IPAs) with which the project/activity is registered. Violation thereof will be subject to penalty.

In line with the issued circular, RBEs who violates for **at least one day** shall be suspended of its income tax incentives for the month when the violation took place. Payment of the regular income tax of either twenty-five percent (25%) or twenty percent (20%), whichever is applicable, for the said month, will serve as penalty. In addition, violations committed beyond September 13, 2022 onwards may subject the RBEs to applicable taxes.

RBEs with violation shall continue to file and pay Quarterly Income Tax Return following their usual procedure of computation of the tax due as if no violation was committed. Meaning if the concerned RBE is under the tax regime of Income Tax Holiday (ITH), it shall file the quarterly income tax return (QITR) as if they have not committed the violation. The same manner of filing will apply to RBEs under the 5% Gross Income Tax (GIT) tax regime.



The penalty shall be paid separately using BIR Form No. 0605 with the following details and attachment:

1. Line 6 (ATC) – MC 200
2. Line 8 (Tax Type Code) – IT
3. Line 17 (Manner of Payment) – under “Voluntary Payment” choose “Others” and encode the phrase “Penalty pursuant to FIRB Res. No.017-22”, and
4. Attachment – a separate computation for the penalty on the WFH arrangement violation, see illustration in the RMC.

In computing the penalty, the RBE should be wary of the following:

1. Figures on the month/s of violation is/are based on the average amounts accumulated on a quarterly basis.
2. Net Operating Loss Carry Over (NOLCO) shall not be part of the computation for penalty, and
3. Income tax paid for the current quarter shall be deducted from income tax due to the penalty proportionally to the number of months with the violation.

The penalty shall be paid on or before the due date prescribed for the filing or payment of the quarterly income tax, subject to adjustment upon the filing of the annual income tax return. For the fiscal quarter with month/s subject to penalty that already ended, and returns have been filed, the same will be due within ten (10) days after the issuance of the Circular. Delayed filing and payment will be subject to administrative penalties.

For Annual Income Tax Return (AITR), RBEs shall continue to file using BIR Form No. 1702-EX for those with ITH incentive and BIR Form No. 1702-MX for those enjoying 5% GIT incentive or those with mixed transactions. However, they are mandatorily required to complete the required information pertaining to allowable deductions pursuant to existing tax laws and regulations (i.e., Part VI-Schedule I for BIR Form No. 1702-EX and Part IV-Schedule 5 for BIR Form No. 1702-MX).

Please be guided accordingly.

Sincerely,

Tax Advisory and Compliance Services



This tax advisory is for general information only and should not be treated as a substitute for specific advice. We still recommend that you seek professional assistance in determining the applicability of this advisory. For any comment or question on this matter, please email us at aocheadoffice@alasooplascpas.com or call us at (02) 7116-4366.