

Transfer Pricing and its interface with beneficial ownership

PH-EITI Beneficial Ownership Forum

November 7, 2022

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Transfer pricing – What is it?



- Transfer Pricing (TP) refers to the price charged for tangible/ intangible goods or services or loans between **associated enterprises** or **related parties**
 - Recurring basis
 - One-time basis
- Applies to cross-border and domestic transactions
- Transactions are subject to transfer pricing rules if they are between **associated enterprises** or **related parties** as defined in the regulations

Associated enterprises



Two enterprises are associated if:

One of the enterprises participates directly or indirectly in the management, control, or capital of the other

or

Same persons participate directly or indirectly in the management, control or capital of both enterprises

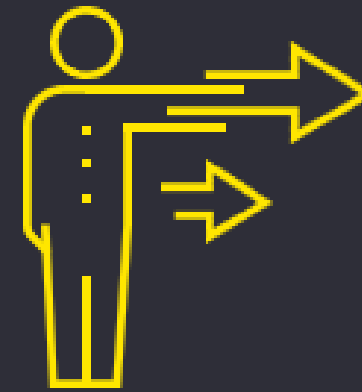
Control – Any kind of control, direct or indirect, whether or not legally enforceable, and however exercisable or exercised.

Related parties

- **Related party - a person or entity that is related to the reporting entity**
- A person or a close member of that person's family is related to a reporting entity if that person:



Has control
or joint control



Has significant
influence



Is a member of the key
management personnel
of the reporting entity
or of a parent of the
reporting entity

- An entity controlled or jointly controlled by the above person is also a related party of the reporting entity

Beneficial ownership



- **Beneficial owner** - Any natural person who ultimately owns or controls or exercises ultimate effective control over the corporation
- **Ultimate effective control** – Any situation in which ownership/control is exercised through actual or a chain of ownership or by means other than direct control
- Thus, a person deemed as the beneficial owner of an enterprise could be considered a related party from a transfer pricing perspective
- Accordingly, transactions of the enterprise with its beneficial owner or the latter's other controlled enterprises could be subject to transfer pricing rules

Relevance of beneficial ownership information requirement



- In determining whether a domestic corporation has transactions with related parties, reliance is made on the related party disclosure in the Notes to the Audited Financial Statements (AFS) as well as on the Information Return on Transactions with Related Party (BIR Form No. 1709 or RPT Form) filed with the BIR together with the Annual Income Tax Return
- The requirement to include information on beneficial ownership in the GIS filed by a domestic corporation would help strengthen the accuracy of the related party transactions disclosed in the Notes to the AFS and RPT Form
- Consequently, transactions with the beneficial owner or the latter's other controlled enterprises would be captured and treated as related party transactions subject to transfer pricing rules

Arm's length principle



- Requires the transaction with a related party to be made under comparable conditions and circumstances as a transaction with an independent party
- In essence, requires that transfer prices between related parties should be set as though the entities were operating at arm's length (or as independent enterprises)

Importance of TP rules

1

To prevent avoidance of tax by shifting taxable income from high tax rate country to low tax rate foreign country

2

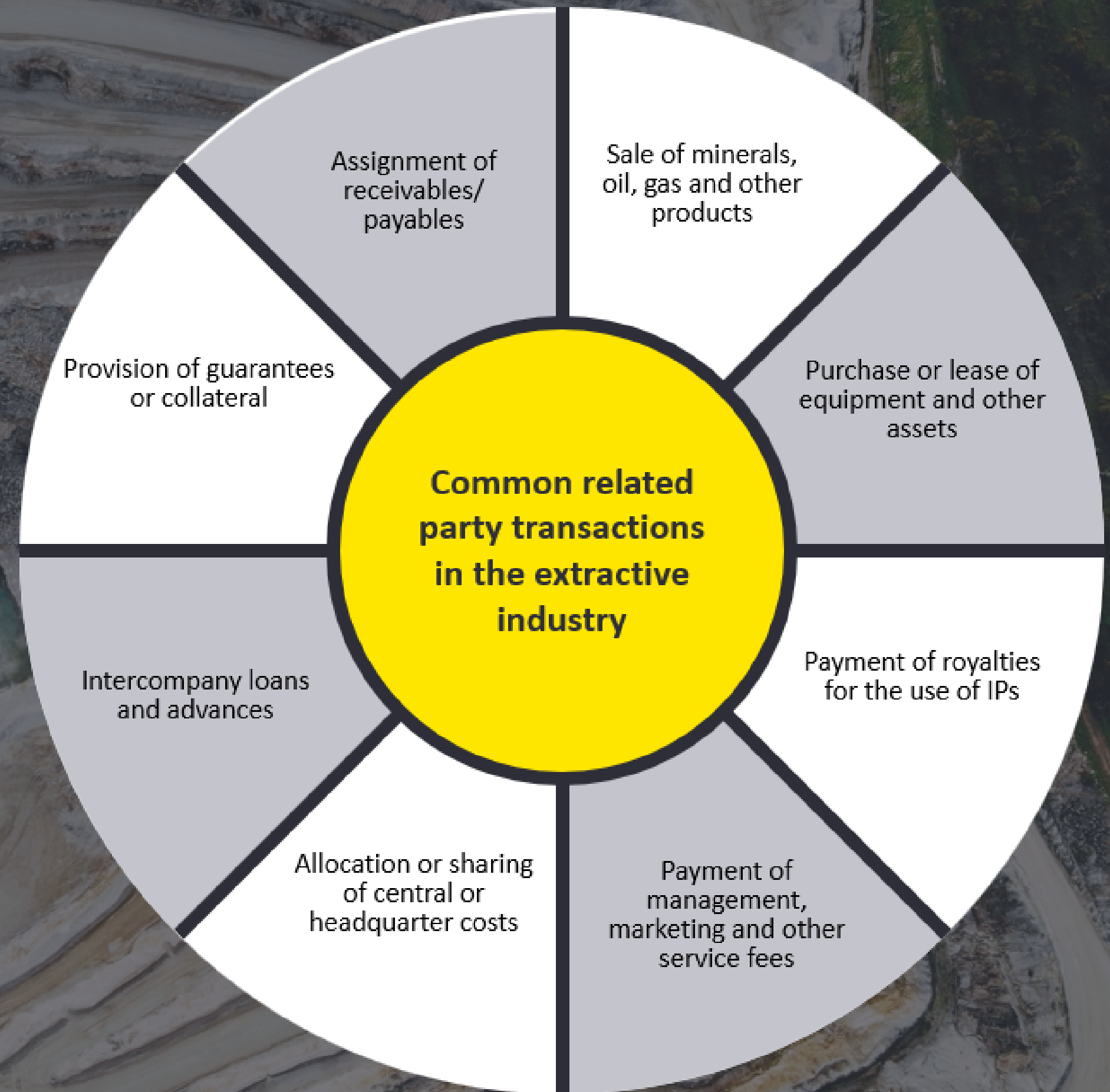
To prevent avoidance of tax by shifting taxable income from activities subject to regular tax to activities enjoying income tax holiday or preferential tax rate

3

To ensure that the tax authority receives the tax properly due to it and not erode its tax revenue base

Related party transaction

refers to the transfer of resources, services or obligations between a reporting entity and a related party, regardless of whether a price is charged.



Transfer Pricing Audit Risk Factors

Materiality of related party transactions

Losses over several years

Lower net operating profit than that of the industry

Transactions with RPs in countries or economic zones with low or zero tax rates

Non-routine types of RPTs, such as business restructuring

Factors that need to be examined

RPTs of a special nature, such as transfer of intangible assets (license)

Worldwide effective tax rate

Potential applicability of a tax treaty

Source of income and tax credit availability

Significance of RPTs not included in the taxpayer's net operating profit

Relevant law and BIR issuances



Section 50, NIRC

1 January 1998



RR No. 2-2013

9 February 2013



RAMO No. 1-2019

27 August 2019



RR No. 19-2020

25 July 2020



RMC No. 76-2020

29 July 2020



RMC No. 98-2020

15 September 2020



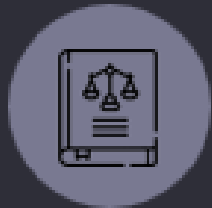
RR No. 34-2020

23 December 2020

Allocation of Income and Deductions

- Empowers the Commissioner to make **allocation of income and expenses** between or among controlled group of companies if he determines that a related taxpayer has not reported its true taxable income
- Taxpayers covered are organizations, trades, or business (whether incorporated or not and whether organized or not in the Philippines) owned or controlled directly or indirectly by the same interests

Relevant law and BIR issuances



Section 50, NIRC
1 January 1998



RR No. 2-2013
9 February 2013



RAMO No. 1-2019
27 August 2019



RR No. 19-2020
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RMC No. 76-2020
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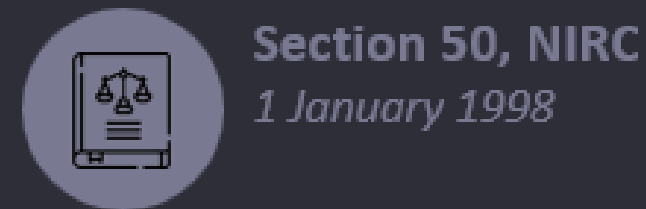
RMC No. 98-2020
15 September 2020



RR No. 34-2020
23 December 2020

TP Guidelines

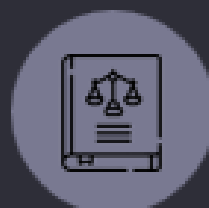
- Implement the authority of the Commissioner under **Section 50 of the Tax Code**
- Prescribe guidelines for determining the appropriate revenue and taxable income of parties in a controlled transaction
- Require the **maintenance or safekeeping of documentation** necessary for the taxpayer to prove that efforts were exerted to determine the arm's length price or standard in measuring transactions among associated enterprises



TP Audit Guidelines

- Provides standardized audit procedures and techniques in the conduct of audit of taxpayers with related party and/or intra-firm transactions
- Apply to the examination of the following transactions:
 - **Controlled transactions between related/associated parties** – where at least one party is assessable or chargeable to tax in the Philippines
 - **Transactions between a permanent establishment (PE) and its head office or other related branches**
 - PE will be treated as a separate and distinct enterprise from its head office or other related branches/subsidiaries for tax purposes.
 - **Intra-Firm Transactions**
 - Occur when a taxpayer engaged in activities subject to different tax regimes (i.e., ITH, 5% GIT and regular corporate tax) misallocates or manipulates profits and costs to minimize tax liabilities

Relevant law and BIR issuances



Section 50, NIRC

1 January 1998



RR No. 2-2013

9 February 2013



RAMO No. 1-2019

27 August 2019



RR No. 19-2020

25 July 2020



RMC No. 76-2020

29 July 2020



RMC No. 98-2020

15 September 2020



RR No. 34-2020

23 December 2020

Prescribes the **use** of the new BIR Form No. 1709 or Information Return on Related Party Transactions

Clarifies certain issues on the filing of BIR Form No. 1709 and its attachments

Extension of deadline in the submission of BIR Form No. 1709 and its attachments

Prescribes the **guidelines and procedures on the submission** of new BIR Form No. 1709, TP Documentation and other supporting documents

Relevant law and BIR issuances



RMC No. 44-2021
31 March 2021

Taxpayer may opt to file BIR Form No. 1709 **manually or electronically** through eAFS System



RMC No. 54-2021
27 April 2021

Clarifies certain issues on the submission of BIR Form No. 1709, and the preparation of TP Documentation

Consequences for non-compliance

Penalties



**P1,000
to P25,000**

Failure to file the RPT Form
due to reasonable cause
and not willful neglect



**P25,000
maximum penalty**

Repeated failure
to file



**Criminal liability
upon conviction**

Failure or neglect to
comply even after receiving
summons



**P5,000
to P10,000**

Fine



1 to 2 years

Imprisonment
of concerned company
officers

Consequences for non-compliance

1

Failure to provide any material information (e.g. details of related parties and related party transactions)

- The BIR will regard BIR Form No. 1709 as not duly filed
- Penalty for failure to file such information return will be imposed

2

Risk of priority for tax/transfer pricing audit

3

Pricing for Related Party Transactions may be treated as arbitrary which could lead to adjustment of revenue or expenses resulting to deficiency tax assessments

Questions?





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Professional Qualifications

- Tax and Transfer Pricing Partner and Country Leader of the International Taxation and Transaction Services of SGV & Co. (Ernst & Young) in the Philippines.
- Former Country Leader of the Transfer Pricing Services of SGV & Co. for 20 years
- Lawyer and a Certified Public Accountant in the Philippines, as well as a registered Barrister and Solicitor in Victoria, Australia.
- Completed his law degree from the Ateneo de Manila University and his accounting degree from the University of Santo Tomas.
- Completed his Master of Laws (International Taxation Focus) from the University of Sydney and Continuing Legal Education from the University of Melbourne.
- Chartered Tax Adviser of the Taxation Institute of Australia, a member of the Integrated Bar of the Philippines and the Philippine Institute of Certified Public Accountants.

Skills

- Specializes in transfer pricing and has handled and managed various transfer pricing projects such as documentation, APA, planning, policy development and implementation, TP audit and controversies.

Experience

- Over 29 years experience in providing various tax services to local and multinational companies and over 24 years local and overseas experience in handling various transfer pricing engagements, including working with the Transfer Pricing Group in the Sydney office.
- Wide experience in advising clients on tax planning, tax-efficient corporate structures, mergers, spin-offs and other corporate reorganizations; handling tax audit investigations, securing tax rulings and refunds from the local tax authorities.
- Wide experience in conducting various transfer pricing studies and documentations for clients engaged in different industries; assisting clients in developing and implementing transfer pricing policies; and representing clients before the local tax authorities on contentious transfer pricing controversies.
- Written and published various articles on transfer pricing and has been a resource speaker in local and regional transfer pricing seminars.

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