

ADVISORY ON INCOME TAX TREATMENT OF EQUITY-BASED COMPENSATION

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BIR REVENUE MEMORANDUM CIRCULAR
NO. 143-2022 2

This Circular is issued to provide further clarification and guidelines to several issues in the implementation of Revenue Regulations No. 13-2022 relating to the tax treatment of equity-based compensation granted by employers to its employees.

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Clarifying Issues Relative to Revenue Regulations (RR) No. 13-2022
on Income Tax Treatment of Equity-Based Compensation

Effectivity

RR No. 13-2022 shall be applied **prospectively.**



Any exercise or availment of employee-grantee (whether rank-and-file or occupying a managerial or supervisory position) of granted equity-based compensation **on or after October 29, 2022** shall be considered as compensation which shall be subject to **withholding tax on compensation.**

[A1][A2]

Tax Treatment [A3][A4]

Grant Equity-Based Compensation	Sale or Transfer of Equity-Based Compensation	Exercise of Equity-Based Compensation
<p>✗ Capital Gains Tax</p> <p>No CGT shall be imposed, whether with or without option price, since there is no realized capital gain on the part of the employer-grantor.</p> <p>✗ Documentary Stamp Tax</p> <p>No DST shall be imposed upon the grant by employers of equity-based compensation to its employees.</p>	<p>Treated as a sale, barter or exchange of stocks not listed in the stock exchange.</p> <p><u>Sale/Transfer with Consideration</u></p> <p>✓ Capital Gains Tax</p> <p>Subject to CGT imposed under Section 24(C) of the Tax Code.</p> <p><u>Transfer is without consideration</u></p> <p>✓ Donor's Tax</p> <p>The transfer shall be treated as a donation of shares of stocks subject to donor's tax.</p>	<p>✓ Income Tax (IT) and Withholding Tax on Compensation (WTC)</p> <p>The difference between the book value/FMV of the shares, whichever is higher, at the time of the exercise of equity-based shares and the price fixed on the grant date, shall be considered as additional compensation subject to IT and WTC.*</p> <p>✓ Documentary Stamp Tax</p> <p>Imposed only upon the actual issuance of shares to the employee-grantee.</p>

*Applies to the exercise of equity-based compensation granted to employers involving its own shares of stock or shares of stock or shares of stock it owns to its employees, whether rank-and-file or occupying supervisory or managerial position.

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Filing of Tax Returns

The employer-grantors shall file the following BIR Forms starting **November 2022** (for equity-based compensation exercised starting October 29, 2022):

1. BIR Form No. 1601-C (Monthly Remittance Return of Income Taxes Withheld)
2. BIR Form No. 1604-C (Annual Information Return of Income Taxes Withheld on Compensation)
3. BIR Form No. 2316 (Certification of Compensation Payment/Tax Withheld)

Additional filings with employee-grantees occupying Managerial or Supervisory positions prior to the effectivity date of RR No. 13-2022

1. BIR Form No. 1603Q (Quarterly Remittance Return of Final Income Taxes Withheld on Fringe Benefits Paid to Employees Other Than Rank and File):
 - on or before October 31, 2022 relating to the equity-based compensation exercised during the third quarter of year 2022; and/or
 - on or before January 31, 2023 relating to the equity-based compensation exercised anytime from October 1-28, 2022;
2. BIR Form No. 1604-F (Annual Information Return on Income Payments Subjected to Final Withholding Taxes); and
3. BIR Form No. 2306 (Certificate of Final Tax Withheld at Source).

Reportorial Requirements

Grant of Equity-Based Compensation (EBC)

When: Within 30 days from grant of EBC
Who: The corporation/the employer-grantor
To Whom: Revenue District Office (RDO) where it is registered
What: Shall submit a statement under oath indicating the following:

- a. Terms and Conditions of stock option;
- b. Names, TINs, positions of grantees;
- c. Book value, FMV, par value of the shares subject of the option at the grant date;
- d. Exercise price, exercise date and/or period;
- e. Taxes paid on th grant, if any; and
- f. Amount paid for the grant, if any.

Exercise of Equity-Based Compensation

When: On on before the 10th day of the month following the month of exercise.
Who: The employee-grantor
What: Shall file a report staing therein the following:

- a. Exercise Date;
- b. Names, TINs, positions of those who exercised the option
- c. Book value, FMV, par value of the shares subject of the option at the grant date;
- d. Mode of settlement (i.e., cash, equity);
- e. Taxes withheld on the exercise, if any.

Source: Revenue Memorandum Circular No. 143-2022