REVENUE MEMORANDUM CIRCULAR NO. 143-2022 issued on November 9, 2022 clarifies several issues relative to the implementation of Revenue Regulations (RR) No. 13-2022 on the Income Tax treatment of equity-based compensation granted by employers to its employees.

The effectivity date of RR No. 13-2022 is October 29, 2022 which shall be applied prospectively. In this regard, any exercise or availment by employee-grantee (whether rank-and-file or occupying a managerial or supervisory position) of the granted equitybased compensation **on or after October 29, 2022** shall be considered as compensation, which shall be subject to Withholding Tax on compensation.

No Capital Gains Tax (CGT) shall be imposed upon grant of equity-based compensation, whether with or without an option price (which is, for the avoidance of doubt, different from the exercise price) since there is no realized capital gain on the part of the employer-grantor.

No Documentary Stamp Tax (DST) shall be imposed upon grant by employers of equity-based compensation to its employees.

Sale, barter, or exchange by employee-grantee of the granted equity-based compensation is treated as a sale, barter, or exchange of stocks not listed on the stock exchange.

a. *Sale or transfer is with consideration.* Sale or transfer of the granted equity- based compensation is subject to CGT imposed under Section 24 (C) of the National Internal Revenue Code of 1997, as amended (Tax Code). If the equity-based compensation was granted for a price, the difference between the sales price and the option price shall be subject to CGT. If the same was granted without a price, the cost base of the option for purposes of computing the capital gains shall be zero.
b. *Transfer is without consideration.* The transfer shall be treated as a donation of shares of stock subject to Donor's Tax. The basis shall be the Fair Market Value (FMV) of the option at the time of the donation.

The difference between the book value/FMV of the shares, whichever is higher, at the time of the exercise of the equity-based compensation and the price fixed on the grant date, shall be considered as additional compensation subject to Income Tax and consequently to Withholding Tax on compensation.

The above rule applies to the exercise of equity-based compensation granted by employers involving its own shares of stock or shares of stock it owns to its employees, whether rank-and-file or occupying a supervisory or managerial position.

DST shall be imposed only upon the actual issuance of shares of stock to the employee-grantee in line with Sections 174 and 175 of the Tax Code.

In the event that the granted equity-based compensation is transferable to employee-grantee's successor/heirs in case of death of employee-grantee, and such successor/heirs exercised the same within the prescribed exercise period, the difference between the book value/FMV of the shares, whichever is higher, at the time of the exercise of the granted equity-based compensation and the price fixed on the grant date, shall be considered as donation, and shall be subject to Donor's Tax.

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

a. BIR Form No. 1601-C (Monthly Remittance Return of Income Taxes Withheld);
b. BIR Form No. 1604-C (Annual Information Return of Income Taxes Withheld on Compensation); and
c. BIR Form No. 2316 (Certificate of Compensation Payment/Tax Withheld).

However, the employer-grantors are still required to file the following tax returns relating to the equity-based compensation exercised by their respective employee-grantees occupying managerial or supervisory position prior to the effectivity date of RR No. 13-2022:

a. 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 any time from October 1-28, 2022;
b. BIR Form No. 1604-F (Annual Information Return on Income Payments Subjected to Final Withholding Taxes); and
c. BIR Form No. 2306 (Certificate of Final Tax Withheld at Source).

Within 30 days from the grant of the equity-based compensation, the issuing corporation which is, for the avoidance of doubt, the employer-grantor, shall submit to the Revenue District Office where it is registered a statement under oath indicating the following:

a. Terms and Conditions of the stock option;
b. Names, TINs, positions of the 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 the grant, if any; and
f. Amount paid for the grant, if any.

During the exercise period, the employer-grantor shall file a report on or before the 10th day of the month following the month of exercise stating 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 exercise date/s;
d. Mode of settlement (i.e., cash, equity); and
e. Taxes withheld on the exercise, if any.