



Republic of the Philippines  
**DEPARTMENT OF FINANCE**

Roxas Boulevard Corner Pablo Ocampo, Sr. Street  
Manila 1004

DOF Opinion No. 016.2022

**ATTY. MICHAEL N. MONTERO**  
APAC General Counsel  
Concentrix  
via: *michael.montero@concentrix.com*

**SUBJECT : Clarification on the Tax Treatment of Equity-Based Compensation**

**Dear Atty. Montero:**

This refers to your letter dated October 5, 2022 where you requested clarification on the tax treatment of equity-based compensation in the form of stock options, share awards, stock units, stock appreciation rights, and other share grants and options plans.

In this regard, we understand that the position of multinational companies that have operations in the Philippines, particularly within the Information Technology-Business Process Management (IT-BPM) sector, is that said equity-based compensation are considered compensation under Section 32 of the Tax Code, as amended, and implemented by Revenue Regulations (RR) 2-98, and that this treatment is regardless of the employment status of the grantee-employee who could either be rank-and-file or occupying a supervisory or managerial position.

The Department notes that the issue arose from the interpretation made by the Bureau of Internal Revenue (BIR) in Revenue Memorandum Circular (RMC) No. 79-2014 on October 31, 2014 where the tax treatment imposed upon stock option plans and other plans relied mostly on the type of recipient such that all income tax implication on acts related to equity grants (grant, vest, and exercise) will be treated as additional compensation income if the grantee is a rank and file employee of the grantor, while the same will be treated as fringe benefits subject to Fringe Benefits Tax (FBT) if the grantee is a supervisory or managerial employee of the grantor.

**Clarification on the Tax Treatment of Equity-Based Compensation**

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We note that the legal bases in support of the request for a clarification from the Department are as follows:

- i. Section 32 (A) of the Tax Code of 1997, as amended, defines gross income as all income derived from whatever source, including compensation for services in whatever form paid, including but not limited to fees, salaries, wages, commissions, and similar items. As implemented, compensation includes payment in some form of medium other than money.
- ii. Section 2.78.1 of Revenue Regulation (RR) No. 2-98, as amended, provides as follows:

*"Section 2.78.1 Withholding Tax on Compensation Income.—*

(A) Compensation Income Defined.

xxx

(1) Compensation paid in kind. Compensation may be paid in money or in some medium other than money, as for example, stocks, bonds or other forms of property. If services are paid for in a medium other than money, the fair market value of the thing taken is the payment to be included as compensation subject to withholding. If the services are rendered at a stipulated price, in the absence of evidence to the contrary, such price will be presumed to be the fair market value of the remuneration received. If the corporation transfers to its employees its own stock as remuneration for services rendered by the employee, the amount of such remuneration is the fair market value of the stock at the time the services were rendered."

Under the Tax Code and RR 2-98, there is clearly a broad base considered to be taxable as compensation income, including payments in stock or other forms of property.

- iii. Equity-based grants are consistently treated by grantor companies as compensatory on account of the vesting period within which the





employees are required to be employed by/render services to the employer and, as such it is granted to employees in exchange for their services, rather than as a perk which is the conventional description of items included under the items subject to FBT under Section 33 of the Tax Code and RR 3-98 dated May 21, 1998.

- iv. In previous rulings issued by the BIR (BIR Ruling 119-12 dated February 22, 2012, DA697-07 dated December 28, 2007, DA402-07 dated July 20, 2007, and DA181-01 dated October 5, 2001) that preceded RMC 79-2014 but came after the effectivity of the current Tax Code and RR 2-98, the BIR recognized that for equity grants, “since the benefit was given as performance incentive for services rendered by the employees, then the benefits shall be considered as additional taxable compensation income.”
- v. Other territories with FBT regulations such as Australia from which our FBT regulations in PH were patterned from, treat equity income as income subject to compensation tax instead of subjecting them to FBT.

The Department also notes that this confusion on the tax treatment of equity-based compensation has impacted the grant by multinational corporations (MNCs) to qualified individuals, who are mostly Filipinos, of stock options and other option plans, thereby diminishing wealth creation opportunities for our countrymen.

Given the legal bases cited in the request, the Department is of the opinion that equity grants awarded to the employees under various types of stock options and other plans such as share awards, stock units, stock appreciation rights are for the services being rendered by the said employees and, consequently, the same is considered compensation in kind under Section 32 of the Tax Code, as amended, and implemented by RR 2-98, and that the previous BIR rulings upholding this treatment are more consistent with the Tax Code and RR 2-98 than the pronouncement previously made under RMC 79-14. This rule is to be applied regardless of the employment status of the grantee-employee who could either be rank-and-file or occupying a supervisory or managerial position considering that Section 32 of the Tax Code and all applicable issuances do not make a distinction for purposes of applying the tax implication on all forms of compensation, including equity-based compensation. This effectively supersedes parts of RMC 79-14 which are inconsistent with the findings of the Department herein.






To further clarify the tax treatment as above specified, the Department, through the Bureau of Internal Revenue, will issue a corresponding Revenue Regulation.

Please be guided accordingly.

Very truly yours,

  
**BENJAMIN E. DIOKNO**  
Secretary of Finance  
OCT 06 2022



*Copy furnished:*

**HON. LILIA C. GUILLERMO**  
*Commissioner, Bureau of Internal Revenue*