REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

December 27, 2017

REVENUE MEMORANDUM CIRCULAR NO. 102-2017

SUBJECT : Taxation of Taxpayers Engaged in Philippine Offshore Gaming Operations

TO : All Internal Revenue Officers and Others Concerned

I. Background

On September 1, 2016, the Philippine Amusement and Gaming Corporation (PAGCOR) issued Rules and Regulations for Philippine Offshore Gaming Operations (POGO), clearly defining the concept, components, operations and regulation, among others, of Offshore Gaming. This gaming activity basically refers to the offering by a licensee of PAGCOR of online games of chance via the internet, using a network and software or program, exclusively to offshore authorized players, excluding Filipinos abroad, who have registered and established an online gaming account with the licensee.

The Bureau of Internal Revenue (BIR), not a newcomer to the workings and tax issues presented by online business transactions through the internet, feels that the challenge in gaming operations is how to implement a fair and equitable taxation of online gaming businesses, how to monitor the revenues and revenue-generating activities of POGO and how to adapt existing taxes to POGO so as to lessen the so-called "lost potential tax revenues". This is the perspective from which the current issue of taxing taxpayers engaged in POGO should be viewed.

Given this perspective, this Circular is being issued to clarify the taxability of POGO and its gaming components, mindful of BIR's basic taxation framework spelled out in Revenue Memorandum Circular (RMC) No. 33-2013 dated April 17, 2013, that applies to operations of PAGCOR licensees and contractees. To be sure, due consideration is given to relevant jurisprudence, the accepted recognition that online activity is sufficient to constitute doing business in the Philippines and the "level of digitalization" of BIR's tax enforcement and collection system.

II. Policies and Guidelines

Consistent with tax laws applicable to taxable business entities and establishments, persons who conduct or who are engaged in the business of offshore gaming operations, including their agents and components shall observe and comply with the following:

1. Register the business at the Revenue District Office (RDO) having jurisdiction over the principal place of business/head office (or residence in case of individuals), by accomplishing BIR Form 1901 (for individuals) or 1903 (for corporations or partnerships), and pay the registration fee to any Authorized Agent Bank (AAB) located within the RDO. A BIR Certificate of Registration shall be issued by the RDO, reflecting therein the tax types required of the concerned taxpayer for filing and payment, which shall be displayed conspicuously in the business establishment.

2. File applicable tax returns on or before due dates, pay correct internal revenue taxes, and submit information returns and other appropriate tax compliance reports in accordance with existing rules and regulations.

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3. Keep books of accounts and other business/accounting records within the time prescribed by law, and such shall be made available anytime for inspection and verification by duly authorized Revenue Officer/s for the purpose of ascertaining compliance with tax rules and regulations.

III. Classification of POGO Taxpayers

In consonance with PAGCOR's Rules and Regulations, POGO taxpayers are classified as follows:

1. Licensee, which refers to a POGO, duly licensed and authorized by PAGCOR to provide offshore gaming services, which may be:

   a. Philippine-based Operator, a duly constituted business enterprise organized in the Philippines.

   b. Offshore-based Operator, a duly constituted business enterprise organized in any foreign country, who will engage the services of a PAGCOR-accredited Service/Support Provider for its online gaming activity.

2. Other Entity, which may refer to a POGO **Licensee or any other business entity** duly licensed and authorized by PAGCOR to provide a particular or specific component of the offshore gaming activities to the POGO, which may be:

   a. POGO-gaming Agent, which refers to the representative in the Philippines of Offshore-based Operator.

   b. Service Provider, which refers to the entity which provides components of offshore online gaming operations, which may further be:

      (1) Gaming Software/Platform Provider, for gaming systems and games, sports book, pool betting, etc.

      (2) Business Process Outsourcing Provider, for call centers and IT-support services, excluding the taking of actual bets.

      (3) Data/Content Streaming Provider, for real time streaming of casino games produced from a live dealer studio set-up, streamed via the internet to the website of the Licensees.

   c. Gaming Support Provider, which refers to a company that produces proprietary products and services that may or may not be found in the gaming system of the Licensee, but is an important part of the online gaming set-up, e.g. payment solutions, player registration, rewards and marketing modules.

IV. Taxability of POGO

1. The income of POGO, consistent with the PAGCOR Charter and settled jurisprudence, may be classified as follows:

   a) Income from Gaming Operations, which refers to income or earning realized or derived from operating of gambling casinos, gaming clubs and other similar recreation or amusement places, and gaming pools; and

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b) Income from Other Related Services, which refers to income or earning realized or derived not from gaming operations but from such other necessary and related services, shows and entertainment.

2. The operations or activities POGO and/or Other Entity, as classified above, shall have the following tax treatment:

a) The entire gross gaming receipts/earnings or the agreed or pre-determined minimum monthly revenues/income from Gaming Operations under existing rules, whichever is higher, shall be subject to a franchise tax of five percent (5%), in lieu of all kinds of taxes, levies, fees or assessments of any kind, nature or description. This income is therefore exempt from any kind of tax, income or otherwise, as well as fees, charges or levies of whatever nature, whether national or local.

b) Income from Other Related Services income from non-gaming operations) shall be subject to normal income tax, value-added tax and other applicable taxes, as may be deemed appropriate. The 5% franchise tax in lieu of all taxes shall not apply.

c) A Licensee deriving income from both gaming operations and from other related services shall be subject to 5% franchise tax on its gaming revenues and normal income tax, value-added tax and other applicable taxes on its non-gaming revenues.

d) An Other Entity, specifically including the gaming agent, Service Provider and Gaming Support Provider, who is also a POGO Licensee shall be taxed 5% Franchise tax on its gaming activities and subject to the normal tax rate and other appropriate taxes on its non-gaming operations. An Other Entity, who is not a POGO Licensee, deriving or earning only Income from Other Related Services or from non-gaming operations shall be subject to normal income tax, value-added tax and other applicable taxes on its entire revenues.

e) Income payments made by POGO licensees or any other business entity licensed or authorized by PAGCOR for all their purchases of goods and services shall subject to withholding taxes as may be appropriate and applicable.

f) Compensation, fees, commissions or any other form of remuneration as a result of services rendered to POGO licensees or any other business entity licensed by PAGCOR shall be subject to applicable withholding taxes under existing revenue laws and regulations.

g) Purchases (local or imported) and sale (local or international) of goods (tangible or intangible) or services shall be subject to existing tax laws and revenue issuances, as may be applicable.

V. Repealing Clause

Any ruling or revenue issuance which is inconsistent herewith is hereby amended, repealed or modified accordingly.

All internal revenue officials and others concerned are hereby enjoined to give this Circular the most extensive publicity possible.

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CAESAR R. DULAY
Commissioner of Internal Revenue

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