REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

AUG 16 2021

REVENUE MEMORANDUM CIRCULAR NO. 97-2021

Subject: Taxation of Any Income Received by Social Media Influencers

To: All Revenue Officers, Employees and Others Concerned

Section 1. Background

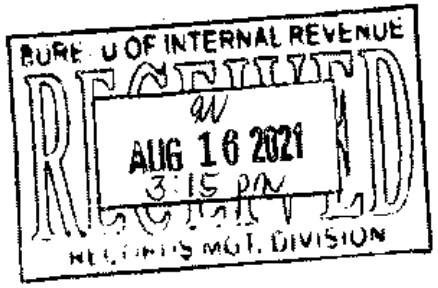
The accessibility of internet in almost all parts of the world and the birth of social media platforms have opened a new channel for companies or brands to reach their target market, and that is through social media influencer marketing. Heavy reliance on social media influencers can be attributed to the belief of such companies that with the authority, knowledge, connection, and reputation the former have established over time, they are able to impact or affect the purchasing decisions and the way of life of their audience or followers.

In previous years, companies would hire celebrities to appear in a TV commercial or to pose on a billboard just to market their products and to reach a wider audience. With social media influencer marketing, a brand or company can now easily promote its products or business through sponsored posts or by partnering with influencers and placing ads on any content of its choice, preferably on the channel of influencers with a significant number of followers, among others. Influencer marketing has thus become a vital part of the marketing strategies of these companies and the new norm for digital marketing, being one of the most effective ways nowadays to communicate with a brand's target audience or improve brand awareness.

Section 2. Objective

The Bureau of Internal Revenue (BIR) has been receiving reports that certain social media influencers have not been paying their income taxes despite earning huge income from the different social media platforms. There are also reports that they are not registered with the BIR or are registered under different tax types or line of business but are also not declaring their earnings from social media platforms for tax purposes. Whatever may be the reasons, it is now the most opportune time to discuss the tax obligations of these social media influencers.

This Circular is therefore issued to clarify the tax obligations of all social media influencers, individual or corporation, with the end goal of raising revenues from their undeclared income and at the same time, reminding them of their obligations under the law and of the possible consequences of their failure to pay taxes.



Section 3. Definition of Social Media Influencers

The term "social media influencers" referred to in this Circular includes all taxpayers, individuals or corporations, receiving income, in cash or in kind, from any social media sites and platforms (YouTube, Facebook, Instagram, Twitter, TikTok, Reddit, Snapchat, etc.) in exchange for services performed as bloggers, video bloggers or "vloggers" or as an influencer, in general, and from any other activities performed on such social media sites and platforms.

Section 4. Liability for Income Tax and Percentage or Value-Added Tax

Unless exempted pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended,[1] and other existing laws,[2] social media influencers shall be liable to income tax and Percentage or Value-Added Tax,[3] as shown below:

Income Tax

Section 23 of the NIRC, as amended, provides that a citizen of the Philippines residing therein and domestic corporations shall be taxable on all income derived from sources within and without the Philippines, while a non-resident citizen, resident, non-resident alien, and resident foreign corporations shall be taxable on income derived from sources within the Philippines.

Social media influencers other than corporations and partnerships are classified for tax purposes as self-employed individuals or persons engaged in trade or business as sole proprietors, and therefore, their income is generally considered business income.

Social media influencers derive their income from the following sources:

i. **YouTube Partner Program** – this allows an influencer to make money from;
   a) Advertising revenue – the influencer gets ad revenue from display, overlay, and video ads.
   b) Channel membership – the influencer makes recurring monthly payments in exchange for special perks that he/she/it offers.
   c) Merch shelf – followers can browse and buy official branded merchandise from the influencer's watch pages.
   d) Super Chat and Super Stickers – followers pay to get their messages highlighted in chat streams.
   e) YouTube Premium Revenue – the influencer gets a part of a YouTube Premium subscriber's subscription fee when followers watch his/her/its contents.

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[1] Republic Act (RA) No. 10963, or the Tax Reform for Acceleration and Inclusion (TRAIN) Act, exempts from income tax individual taxpayers earning a taxable annual income not exceeding P250,000.00.

[2] R.A. No. 9178, or the Barangay Micro Business Enterprises (BMBEs) Act of 2002, incentives, including income tax exemption, are available to BMBEs.

[3] Those with gross revenues not exceeding ₱3 Million a year are exempt from VAT. They are, however, liable to percentage tax.

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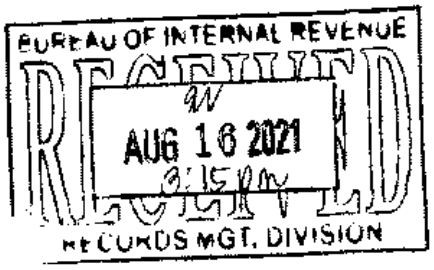
ii. **sponsored social and blog posts** – an influencer features a product or concept he/she/it is paid to promote.
iii. **display advertising** – influencers also have the ability to earn money passively through display advertising. Here, the ad is similar to radio commercials because it interrupts the program.
iv. **becoming a brand representative/ambassador** - the influencer would promote the products on his/her/its social media account in exchange for free products from the brand. Some brands may pay an additional fee for every piece of content or conversion the influencer creates or drives.
v. **affiliate marketing** - In this type of arrangement, an affiliate marketer for the brand or the influencer would be provided with a unique link or code that will be used for tracking his/her conversions. For every conversion resulting from the said link or code, the influencer will earn a commission.
vi. **co-creating product lines** – a brand would partner with an influencer to co-create products for their brand and the latter, in turn, gets paid based on a certain percentage of the profits.
vii. **promoting own products** – the influencer may come up with his/her own line of products.
viii. **photo and video sales** – influencers may create and sell frame-worthy pictures, high-quality videos, or the rights over them as well.
ix. **digital courses, subscriptions, e-books** – influencers sell digital products.
x. **podcasts and webinars** – these may include sponsored ads that generate money or the influencer may charge a small fee to access the content.

To constitute gains or profits from the conduct of trade or business, the payments must be received by a social media influencer in consideration for services rendered or to be rendered, irrespective of the manner or form of payment. Therefore, if a social media influencer receives free products in exchange for the promotion thereof on his/her/it YouTube channel or other social media accounts, he/she/it must declare the fair market value of such products as income.

Except for certain passive income derived from sources within the Philippines, capital gains from the sale of shares not traded in the stock exchange and from the sale of real property classified as capital assets, the income tax shall be imposed on the taxable income of resident citizens, aliens, partnerships, domestic and resident foreign corporations doing business as a social media influencer and shall be based on the schedular tax rates under Section 24(A)(2)(a) of the NIRC or on the corporate income tax rate under Sections 27 and 28 thereof, depending on the type of taxpayer.

Income treated as royalties in another country, including payments under the YouTube Partner Program, shall likewise be included in the computation of the gross income of the social media influencer and shall be subjected to the schedular or corporate tax rates.

For resident aliens, any income derived from Philippine-based contents shall generally be taxable. Thus, the burden of proof that the income was derived from sources without the Philippines lies upon the resident alien. Absent such proof, the income will be assumed to have been derived from sources within the Philippines.



Business Tax

Besides income tax, social media influencers are also liable for business tax, which may either be percentage or VAT. Self-employed individuals whose gross sales or gross receipts and other non-operating income do not exceed the VAT threshold of ₱3,000,000.00 shall have the option to avail of the eight percent (8%) tax on gross sales or gross receipts and other non-operating income in excess of Two hundred fifty thousand pesos (P250,000) in lieu of the graduated income tax rates under Section 24(A)(2)(a) and percentage tax under Section 116 of the NIRC.

Mixed income earners or those who are earning both compensation income and income from business and/or profession shall be taxable under Section 24(A)(2)(a) for all income earned from compensation and income earned from business or practice of profession may be taxed at the same graduated rates or 8% income tax based on gross sales or gross receipts provided that the total gross sales and/or gross receipts and other non-operating income do not exceed the VAT threshold as discussed in the preceding paragraph. However, if the total gross sales and/or gross receipts and other non-operating income exceed the VAT Threshold, the graduated rates under Section 24(A)(2)(a) shall apply and they shall likewise be liable for VAT.

Section 5. Allowable deductions

Section 34 of the NIRC states that in computing taxable income subject to income tax under Sections 24(A); 25(A); 26; 27(A), (B), and (C); and 28(A)(1), there shall be allowed as deduction from gross income, among others, all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on or which are directly attributable to, the development, management, operation and/or conduct of the trade, business or exercise of a profession. The expenses enumerated from Section 34(A) to (I) constitute the itemized deductions. These may be claimed as deductions provided that they are directly and exclusively related to the production or realization of the income and can be substantiated with sufficient evidence, such as BIR-registered receipts and invoices.

In the case of YouTubers for instance, the common business expenses that may be deducted from their gross income include, but not limited to, the following:

1. filming expenses (cameras, smartphones, microphone and other filming equipment);
2. computer equipment;
3. subscription and software licensing fees;
4. internet and communication expenses;
5. home office expenses (ex. proportionate rent and utilities expenses);
6. office supplies;
7. business expenses (e.g. travel or transportation expenses related to YouTube business, payment to an independent contractor or company for video editing, costume designer, advertising and marketing costs (cost of contests and giveaway prizes, etc.);
8. depreciation expense; and
9. bank charges and shipping fees.

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In lieu of the itemized deductions, the taxpayer may elect Optional Standard Deduction (OSD) or a standard deduction not exceeding forty percent (40%) of gross sales/receipts in the case of individual taxpayers, or 40% of its gross income in the case of corporations. No substantiation is required for the OSD. To be entitled to OSD, however, the taxpayer must signify in the return the intention to elect OSD; otherwise, he/she/it shall be considered as having availed of the itemized deductions.

Section 6. Tax compliance

A. Registration and updates

Section 236(A) of the NIRC states that every person subject to internal revenue taxes are required to register with the appropriate Revenue District Officer (RDO) while paragraph (F) thereof states that any person registered shall, whenever applicable, update his registration information with the Revenue District Office where he is registered, specifying therein any change in type and other taxpayer details.

Pursuant to Revenue Regulations No. 7-2012, unregistered taxpayers may secure their Taxpayer Identification Number (TIN) from the RDO having jurisdiction over the place where the head office is located or over the place of residence. On the other hand, registered influencers must ensure that their registration reflect their existing line of business. Those who are registered with the BIR as employees, under Executive Order No. 98, series of 1999, or for purposes of One Time Transactions (ONETT) only, including those whose registration does not reflect their existing line of business or current business or residential address, shall update their registration information by filing BIR Form No. 1905 with the RDO where they are registered.

B. Keeping of Books of Accounts

Section 232 of the NIRC requires a taxpayer required by law to pay internal revenue taxes to keep books of accounts duly registered with the BIR, which shall contain all transactions and results of operations. In addition, the taxpayers whose gross annual sales, earnings, receipts or output exceed ₱3 million shall have their books of accounts audited and examined yearly by independent Certified Public Accountants and their income tax returns accompanied with a duly accomplished Account Information Form (AIF) which shall contain, among others, information lifted from certified balance sheets, profit and loss statements, schedules listing income-producing properties and the corresponding income therefrom and other relevant statements.

C. Filing of Tax Returns and Payment of Taxes

Every taxpayer who is engaged in trade or business is liable for income and business taxes (percentage or value-added tax) unless exempted pursuant to the provisions of the NIRC of 1997, as amended, and other existing laws. The social media influencers should always refer to the Certificate of Registration duly issued by the appropriate RDO for the tax returns that must be filed and the deadline for payment of taxes.

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D. Obligation to Withhold (if applicable)

Social Media influencers shall withhold required creditable/expanded withholding tax, final tax on compensation of employees, and other withholding taxes, if applicable. They are obliged to remit the same to the Bureau at the time or times required, and issue to the concerned payees the necessary Certificates of Tax Withheld.

E. Liabilities for Failure to File Returns and Pay Taxes

Social Media influencers who willfully attempts to evade the payment of tax or willfully fails to make a return, to supply accurate and correct information or to pay tax shall, in addition to the payment of taxes and corresponding penalties, be liable criminally liable under Sections 254 and 255, in relation to Section 248(B) of the NIRC:

> **SEC. 254.** ***Attempt to Evade or Defeat Tax.*** - Any person who willfully attempts in any manner to evade or defeat any tax imposed under this Code or the payment thereof shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine not less than Five hundred thousand pesos (P500,000) but not more than Ten million pesos (P10,000,000) and suffer imprisonment of not less than six (6) years but not more than Ten (10) years: Provided, That the conviction or acquittal obtained under this Section shall not be a bar to the filing of a civil suit for the collection of taxes.
>
> **SEC. 255.** ***Failure to File Return, Supply Correct and Accurate Information, Pay Tax Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.*** - Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax make a return, keep any record, or supply correct the accurate information, who willfully fails to pay such tax, make such return, keep such record, or supply correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.
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Under Section 248(B), a substantial under-declaration of taxable sales, receipts or income, or a substantial overstatement of deductions shall constitute prima facie evidence of a false or fraudulent return, and failure to report sales, receipts or income in an amount exceeding thirty percent (30%) of that declared per return, and a claim of deductions in an amount exceeding (30%) of actual deductions shall render the taxpayer liable for substantial under-declaration of sales, receipts or income or for overstatement of deductions, as mentioned herein.

It must be emphasized that the BIR also has the power to obtain information from foreign tax authorities pursuant to the Exchange of Information (EOI) provision of the relevant tax

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treaties. The BIR has the means to verify their income as it is clothed with a special power to obtain information from its treaty partners. The BIR may safely rely on the data provided by its treaty partners to establish the influencer's tax liability.

The social media influencers are, therefore, advised to voluntary and truthfully declare their income and pay their corresponding taxes without waiting for a formal investigation to be conducted by the BIR to avoid being liable for tax evasion and for the civil penalty of fifty percent (50%) of the tax or of the deficiency tax.

Section 7. Avoidance of Double Taxation

In order to avoid the risks of double taxation, a social media influencer receiving income from a nonresident person residing in a country with which the Philippines has a tax treaty must inform the latter that he/she/it is a resident of the Philippines, and is, therefore, entitled to claim treaty benefits provided under the relevant tax treaty.

Where the nonresident requires the presentation of proof of residency, the influencer must obtain a Tax Residency Certificate (TRC) from the International Tax Affairs Division (ITAD) of the BIR and submit the same to the former. The influencer shall exert all efforts to obtain treaty benefits in the state of source.

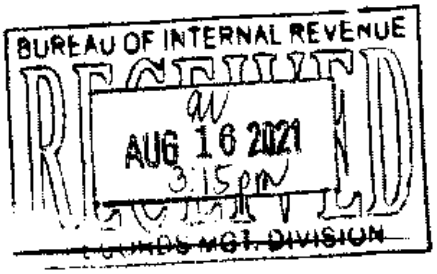
If the influencer did not avail of the treaty benefits and was, in fact, subjected to regular tax in the state of source, he/she/it shall not be allowed to claim foreign tax credits in excess of the appropriate amount of tax that is supposed to be paid in the source state had the income recipient invoked the provision/s of the treaty and proved his/her/its residency in the Philippines. A more detailed discussion on this can be found in Section 5 of Revenue Memorandum Order (RMO) No. 43-2020.

If, on the other hand, the influencer is denied treaty benefits despite being able to prove entitlement thereto, he/she/it must file an application for Mutual Agreement Procedure (MAP) with ITAD following the guidelines and procedures set out in the pertinent revenue issuance for MAP assistance.

Income from YouTube

Early this year, Google LLC, the owner of YouTube, informed the public that any payments from YouTube through any other agreement between the content creator and YouTube (e.g., through the YouTube Partner Program) will be treated as royalties starting June 1, 2021 and that Chapter 3 of the United States (US) Internal Revenue Code requires Google to collect tax information, withhold taxes, and report to the US tax authority when a creator on YouTube earns royalty revenue from viewers in the US. Creators outside the US were thus advised to submit tax information to Google LLC.

For the purpose of fixing the withholding tax rate to be applied on all income payments from YouTube, social media influencers residing in the Philippines are hereby advised to submit



their tax information to Google to be eligible to claim treaty benefits under the tax treaty between the Philippines and the US.

Section 8. Benefits of Obtaining a TRC

A TRC is an official document issued by the BIR, through the ITAD, that certifies the tax residency of a certain taxpayer in the Philippines pursuant to the residency provision of the relevant tax treaty. This document is presented to the foreign country to prove that the taxpayer named therein is a resident of the Philippines and may, therefore, claim the benefits provided under the tax treaty. Failure to prove the residency in the Philippines is fatal to the taxpayer's claim for treaty benefits. To date, the Philippines has 43 valid and effective tax treaties.

A TRC may be obtained following the procedures set forth in RMO No. 43-2020.

Section 9. Effect of Taxes Withheld in Foreign Countries

Section 34(C) of the NIRC provides that income taxes paid or incurred to a foreign country may either be claimed as an item of deduction or as a tax credit but subject to the following limitations:

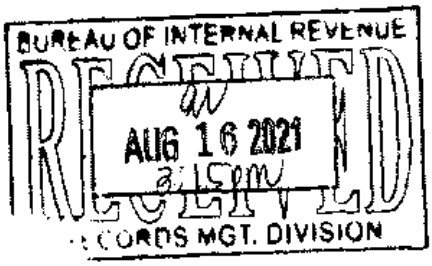
(a) The amount of the credit in respect to the tax paid or incurred to any country shall not exceed the same proportion of the tax against which such credit is taken, which the taxpayer's taxable income from sources within such country under this Title bears to his entire taxable income for the same taxable year; and
(b) The total amount of the credit shall not exceed the same proportion of the tax against which such credit is taken, which the taxpayer's taxable income from sources without the Philippines taxable under this Title bears to his entire taxable income for the same taxable year.

It must be noted that an alien individual and a foreign corporation shall not be allowed the credits against the tax for the taxes of foreign countries.

Tax credits referred in this section shall be allowed only if the taxpayer establishes the following:

a. the total amount of income derived from sources without the Philippines;
b. the amount of income derived from each country, the tax paid or incurred to which is claimed as a credit; and
c. all other information necessary for the verification and computation of such credits (e.g. tax returns filed in the foreign tax authority and proof of payment of foreign taxes).

In the case of a taxpayer who deliberately fails to claim treaty benefits, the amount paid for the purpose of applying this section shall be deemed the amount of tax that should have been paid had the influencer invoked the provisions of the relevant tax treaty.



Illustration

In 2020, GBG, a Filipino social media influencer residing in the Philippines, received USD200,000 or ₱10 million from Google LLC, an enterprise resident of the US, as her share from advertising revenues. Under the US tax law, payments from YouTube through the YouTube Partner Program are considered royalties which are generally subject to tax at 24%. GBG did not receive any other income during the year. When she filed her tax return, she claimed ₱1 million as deductions and opted to avail of tax credit for taxes paid in the US.

a. What is the tax implication if GBG does not inform the income payor that she is a resident of the Philippines?

   GBG's earnings from YouTube will be subjected to tax at the maximum rate of 24% if she does not claim treaty benefit. Google LLC should therefore withhold USD48,000 or ₱2.4 million before remitting the royalties to GBG.

b. What is the tax implication if GBG submits her tax information to Google LLC and proves that she is a resident of the Philippines?

   Under Article 13(2)(a) of the Philippines-US tax treaty, royalties derived by a resident of the Philippines may be taxable in the US but such tax shall not exceed 15% of the gross amount of royalties. If GBG invokes the provisions of the treaty and claims treaty benefit, Google LLC will only impose 15% tax (USD30,000 or ₱1.5 million) on her royalty payments from viewers in the US.

c. How much should be allowed as credit for taxes paid in the US?

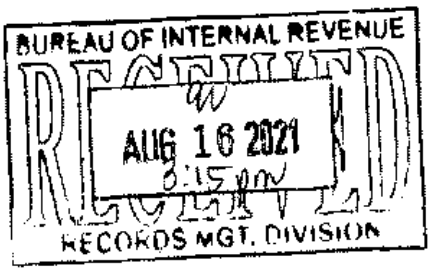
Generally, credit for taxes paid in a foreign country shall be limited to that paid or accrued in the said foreign country.

Where, however, a treaty exists between the source state and the Philippines but the taxpayer fails to invoke the provisions thereof, the tax credit that may be claimed by the taxpayer shall be limited to the tax that should have been paid by the taxpayer had he/she/it claimed the benefits under the said treaty.

In this case, GBG shall only be allowed to claim as credit against her tax due in the Philippines the amount of ₱1.5 million.

d. How much would be the tax payable of GBG in the Philippines?

Whether or not GBG claimed treaty benefit, she still has to declare in her Income Tax Return the royalties earned from YouTube and pay the remaining income tax due, i.e., net of allowable tax credit, as computed below:



Gross income	₱10,000,000.00
Less: Allowable deductions	1,000,000.00
Taxable income	9,000,000.00
Computation of tax still due and payable:	
On 8 million	2,410,000.00
On the excess over 8 million	350,000.00
Tax due	**2,760,000.00**
Less: Foreign tax credit	1,500,000.00
Tax still due and payable	**1,260,000.00**

Section 10. Tax administration

To enhance tax compliance and eventually, increase tax revenues, concerned BIR offices are advised to conduct a full-blown tax investigation against social media influencers residing and/or registered within their respective jurisdictions.

Where, after exhausting all administrative remedies, the investigating office determines that the information needed to determine the taxpayer's liability can only be obtained from a foreign jurisdiction, said office shall coordinate with the EOI Section of the ITAD. In making an EOI request, the investigating office shall be guided by the rules laid down in RMO No. 26-2020 or the EOI Working Manual. At any rate, any request for assistance from the EOI Section of ITAD shall always be accompanied by a memorandum following Model Template 14 of the said RMO.

For monitoring purposes, the investigating office shall provide the EOI Section a feedback on the usefulness of the information provided by a treaty partner within thirty (30) days from the termination of the investigation.

All internal revenue officers, employees and others concerned are enjoined to give this Circular the widest dissemination and publicity possible.

This Circular shall take effect immediately.

CAESAR R. DULAY
Commissioner of Internal Revenue

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