Republic of the Philippines
Department of Finance
BUREAU OF INTERNAL REVENUE
Quezon City

NOV 26 2021

REVENUE REGULATIONS NO. 20-2021

SUBJECT: Implementing Republic Act No. 11590, otherwise known as an "Act Taxing Philippine Offshore Gaming Operations, amending for the Purpose Sections 22, 25, 27, 28, 106, 108 and Adding New Sections 125-A and 288(G) of the NIRC of 1997, as amended, and for Other Purposes"

TO: All Internal Revenue Officers and Others Concerned

SECTION 1. Scope. – Pursuant to the provisions of Section 244 of the National Internal Revenue Code (NIRC) of 1997, as amended, the following Regulations are hereby promulgated to implement Republic Act (R.A.) No. 11590, otherwise known as an "Act Taxing Philippine Offshore Gaming Operations, amending for the Purpose Sections 22, 25, 27, 28, 106, 108 and Adding New Sections 125-A and 288(G) of the NIRC of 1997, as amended, and for Other Purposes."

SECTION 2. Definition of Terms. – For purposes of these Regulations and to ensure effective implementation of R.A. No. 11590, the following words and phrases shall have the meaning indicated below:

A. **Accredited Service Provider** refers to any natural person regardless of citizenship or residence, or juridical person regardless of place of organization, which provides ancillary services to an Offshore Gaming Licensee (OGL) or any other offshore gaming operator with license acquired from other jurisdictions.

   Such ancillary service may include, but shall not be limited to customer and technical relations and support, information technology, gaming software, data provision, payment solutions, and live studio and streaming services.

B. **Agreed Pre-determined Minimum Monthly Revenue from Gaming Operations** refers to the amount that is derived after dividing the minimum monthly fee or its equivalent, as imposed by a Philippine Offshore Gaming Operation (POGO) Licensing Authority, by the rate of prescribed regulatory fee.

C. **Gross Gaming Revenue or Receipts (GGR)** means gross wagers less payouts.

D. **Gross wagers** refer to the total amount of money that offshore gaming customers wager.

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E. **Income from Gaming Operations** refers to income or earnings realized or derived from operating online games of chance or sporting events via the internet using a network and software or program.

F. **Income from Non-Gaming Operations** refers to any other income or earnings realized or derived within the Philippines by Foreign-based OGLs, and all other income or earnings realized or derived by Philippine-based OGLs that are not classified as income from gaming operations.

G. **Offshore Gaming Licensee (OGL)** refers to an offshore gaming operator, whether organized in the Philippines (Philippine-based) or abroad (Offshore or Foreign-based), duly licensed and authorized through a gaming license issued by a POGO Licensing Authority to conduct offshore gaming operations, including the acceptance of bets from offshore customers.

For purposes of these Regulations, an OGL [also referred to as Interactive Gaming Licensee (IGL) by other POGO Licensing Authorities] shall be considered engaged in doing business in the Philippines.

H. **OGL-Gaming Agent** refers to a representative in the Philippines of a Foreign-based OGL who shall act as a resident agent for the mere purpose of receiving summons, notices and other legal processes for the OGL and to comply with the disclosure requirements of the Securities and Exchange Commission (SEC).

The OGL-Gaming Agent shall not be involved with the business operations of the OGL and shall derive no income therefrom.

Service of electronic Letter/s of Authority (eLOAs), Assessment Notices, and other Bureau of Internal Revenue (BIR) letters & communications to the OGL-Gaming Agent shall constitute service of the same to its principal.

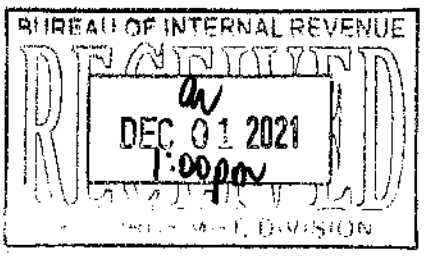
I. **Payouts** refer to the total amount paid out to offshore gaming customers for winning.

J. **Philippine Offshore Gaming Operation (POGO)** refers to the operation by an OGL of online games of chance or sporting events via the internet using a network and software or program, exclusively for offshore customers/players who are non-Filipinos.

The term "POGO entities" shall also refer to OGLs and Accredited Service Providers.

K. **POGO Licensing Authority** refers to Philippine Amusement and Gaming Corporation (PAGCOR) or any special economic zone authority, tourism zone authority or freeport authority authorized by their respective charters to issue gaming licenses and accreditation to POGO entities.

L. **Third-Party Auditor** refers to a consultant or entity engaged by a POGO Licensing Authority to determine the GGR of OGLs.



The Third-Party Auditor should be independent, reputable, internationally known, and duly accredited as such by an accrediting or similar agency recognized by industry experts.

SECTION 3. Taxation of POGO Entities and their Foreign Employees. –

A. **Offshore Gaming Licensees (OGLs)**

i. **Gaming Operations**

In lieu of all other direct and indirect internal revenue taxes and local taxes, there shall be levied, assessed and collected from OGLs (whether Philippine-based or Foreign-based) a gaming tax equivalent to five percent (5%) of the GGR or 5% of the agreed predetermined minimum monthly revenue from gaming operations, whichever is higher.

The gaming tax shall be directly remitted to the BIR not later than the 20th day following the end of each month.

ii. **Non-Gaming Operations**

a. The income from non-gaming operations of Philippine-based OGLs shall be subject to an income tax equivalent to twenty-five percent (25%) of the taxable income derived during each taxable year from sources within and without the Philippines.

b. The income from non-gaming operations of Foreign-based OGLs shall be subject to an income tax equivalent to twenty-five percent (25%) of the taxable income derived during each taxable year from sources within the Philippines.

c. The non-gaming revenues of all OGLs shall be subject to Value-Added Tax (VAT) or Percentage Tax, whichever is applicable.

B. **Accredited Service Providers**

i. **Income Tax**

a. Except as otherwise provided in the NIRC of 1997, as amended, Accredited Service Providers organized within the Philippines shall pay an income tax rate of twenty-five percent (25%) imposed upon the taxable income derived during each taxable year from sources within and without the Philippines.

b. Except as otherwise provided in the NIRC of 1997, as amended, Accredited Service Providers organized outside the Philippines shall pay an income tax rate of twenty-five percent (25%) imposed upon the taxable income derived during each taxable year from sources within the Philippines.

ii. **VAT**

a. Sale of services by VAT-registered service providers, including Accredited Service Providers, to OGLs subject to gaming tax under Section 125-A of the

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NIRC of 1997, as amended, shall be subject to zero percent (0%) VAT rate: *Provided*, that the VAT zero-rating shall only apply if the OGLs are paying the 5% gaming tax: *Provided further*, that in cases wherein the services provided are used in the non-gaming operations of the OGLs, the zero percent (0%) rate shall not apply.

b. Sale of goods or properties by VAT-registered persons to OGLs subject to gaming tax under Section 125-A of the NIRC of 1997, as amended, shall be subject to zero percent (0%) VAT rate: *Provided*, that the VAT zero-rating shall only apply if the OGLs are paying the 5% gaming tax: *Provided further*, that in cases wherein the goods supplied are used in non-gaming operations, the zero percent (0%) rate shall not apply.

iii **Withholding Tax on Purchases of Goods and Services**

Accredited Service Providers shall withhold and remit the applicable withholding taxes under the NIRC of 1997, as amended, for their purchases of goods and services.

C. **Alien Individuals Employed by POGO Entities**

i. Foreign nationals or non-Filipino citizens, regardless of their residency, term and class of working or employment permit or visa, who are employed and assigned in the Philippines by an OGL or its Accredited Service Provider shall have a Taxpayer Identification Number (TIN) and pay a final withholding tax of twenty-five percent (25%) on their gross income; *Provided*, however, that the minimum final withholding tax due for any taxable month from said persons shall not be lower than Twelve Thousand Five Hundred Pesos (P12,500). The final withholding tax due shall be withheld and remitted monthly by the employer, including the corresponding penalties, interests, and surcharges, if any, in accordance with Revenue Regulations No. 2-98, as amended.

The gross income shall include, whether in cash or in kind, basic salary/wages, annuities, compensation, remuneration, and other emoluments, such as *honoraria* and allowances, received by the alien employee from a POGO entity.

ii. Any income earned from all other sources within the Philippines by foreign employees shall be subject to the income tax under the pertinent provisions of the NIRC of 1997, as amended.

Notwithstanding the abovementioned provisions, POGO entities and their employees shall be subject to other taxes under the NIRC of 1997, as amended, and other laws and issuances, as may be applicable.

Filing of tax returns and payment of all taxes under this Section shall be made utilizing the BIR's Electronic Filing and Payment System (eFPS).

SECTION 4. Information required by the BIR. –

A. Newly established POGO entities shall submit to the BIR the ***Summary List and Status Update on Foreign Nationals Employed Form*** (see Annex A of these

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Regulations), which shall contain an initial list of all foreign nationals they employed until the end of the month of their registration with the BIR. The initial list shall be submitted together with original copies of the notarized Employment Contracts, accompanied with the English translation if written in a foreign language, not later than the 20th day of the succeeding month.

B. All POGO entities shall regularly update the list of their foreign employees by submitting the ***Summary List and Status Update on Foreign Nationals Employed Form*** (Annex A), together with its attachments (i.e., notarized employment contracts for newly hired, notice of termination for those separated from employment, etc.), not later than the 20th day after the close of each month.

C. Each POGO Licensing Authority shall furnish the BIR not later than the 20th day after the close of each month the following:

i. The ***Status Report on OGLs Form*** (Annex B), which shall contain the amount of gross wagers or bets, payouts, the GGR, and the Minimum Guarantee Fee (MGF) or the minimum amount of regulatory fees paid by each OGL as duly certified by their third-party auditors; and

ii. The ***List of Foreign Nationals with Issued Gaming Employment License (GEL) Forms*** (Annex C and Annex C-1) which shall contain the list of POGO Entities and foreign employees including their GEL number, etc.

Provided that, nothing herein shall prevent the BIR from undertaking a post-audit or independent verification of the GGR determined by the third-party auditor.

D. The BIR shall secure from the Department of Labor and Employment (DOLE) the list of foreign nationals employed by POGO entities who secured Alien Employment Permits (AEP). The requested information shall include their names, TIN, AEP number/s issued, nationality, date of birth, employer, monthly salary, etc.

E. The BIR shall secure from the Bureau of Immigration (BI) the list of foreign nationals employed by POGO entities who secured Provisional Working Permits and/or 9(g) visas. The requested information shall include their names, TIN, nationality, date of birth, employer, etc.

The BIR shall ensure that the information or data from DOLE and BI, whether in hardcopy or softcopy, are provided with adequate safeguards for data privacy and security. The softcopy shall be stored in a USB flash drive, particularly in Excel format for data which are in the form of itemized lists.

Submission of digital copy of the required documents above shall be considered as an original copy pursuant to the Electronic Commerce Act (R.A. No. 8792).

SECTION 5. Penalties Imposed. –

A. **Fraudulent Acts.** – Non-registration, non-payment, underpayment, or non-withholding and remittance by OGLs, OGL-Gaming Agents, Accredited Service Providers and any of their branches shall be considered as fraudulent acts, subject

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to incremental penalties under Sections 218(B), 249(B), 253 and 255 of the NIRC of 1997, as amended.

B. **Closure Orders Against Erring Entities.** – The BIR shall implement closure orders against OGLs, OGL-Gaming Agents, Accredited Service Providers and any of their branches that fail to pay any of the taxes enumerated under Section 3 of these Regulations and/or committed any of the fraudulent acts in this Section, and such erring entities shall cease to operate.

The implementation of closure orders against OGLs and/or OGL-Gaming Agents shall necessarily include the closure of all their respective Accredited Service Providers, which must also cease to operate.

C. **Failure to Withhold and Remit Final Withholding Tax.** – Failure by the POGO entities to withhold and remit the final withholding tax under Section 3(C) of these Regulations shall be governed by the NIRC of 1997, as amended. Further, the foreign national concerned may be subject to deportation, be barred from re-entering the Philippines, or blacklisted as a foreign employee by DOLE, BI and other relevant agencies.

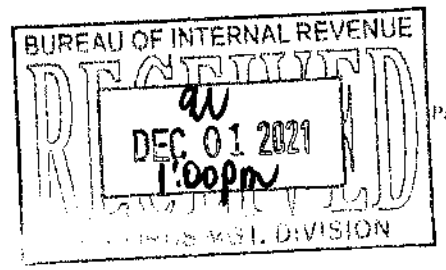
D. **Employment of an Alien without a TIN.** – All POGO Entities that employ or engage a foreign national without a valid TIN shall be liable to pay the BIR a fine of Twenty Thousand Pesos (P20,000) for every foreign national without such TIN: *Provided*, that the foreign national concerned shall still pay, and the employer shall remit, any corresponding taxes, penalties, interests, and surcharges due thereon.

The BIR may recommend to other relevant agencies, the revocation of the primary and other licenses obtained by POGO entities from government agencies and/or their perpetual or temporary ban in employing foreign nationals.

E. **Failure to Submit *Summary List and Status Updates on Foreign Nationals Employed Forms.*** – POGO entities that fail to submit the ***Summary List and Status Update on Foreign Nationals Employed Form*** (Annex A) and/or its attachments, shall be subject to the penalties provided under Section 275 of the NIRC of 1997, as amended: *Provided*, that payment of the corresponding penalty shall not relieve the employer from complying with the submission of said forms and their attachments.

F. **Failure to Provide True and Correct Address.** – POGO entities that fail to provide its true and correct office address shall be considered as having failed to register with the BIR under Section 236 and shall be subject to penalties provided under Section 258 of the NIRC of 1997, as amended.

G. **Other Penalties.** – The enumeration of penalties under these Regulations shall be without prejudice to any liability that a POGO entity and other related persons may incur for the violation of any provision of the NIRC of 1997, as amended, other laws and BIR issuances.



SECTION 6. Disposition of Revenues from Gaming Tax on OGLs. – The provisions of existing law to the contrary notwithstanding, sixty percent (60%) of the total revenue collected from the gaming tax imposed on OGLs shall be allocated and used exclusively in the following manner:

A. Sixty percent (60%) for the implementation of R.A. No. 11223, otherwise known as the "Universal Health Care Act";

B. Twenty percent (20%) shall be allocated to the Health Facilities Enhancement Program (HFEP), the annual requirements which shall be determined by the Department of Health; and

C. Twenty percent (20%) shall be allocated for the attainment of the Sustainable Development Goals (SDGs): *Provided that*, the specific SDG targets shall be determined by the National Economic and Development Authority.

SECTION 7. Transitory Provisions. –

A. In relation to the reports to be submitted to Congress under Section 10 of R.A. No. 11590, all existing POGO entities shall submit to the BIR on or before December 20, 2021 the ***Summary List and Status Update on Foreign Nationals Employed Form*** (Annex A) together with the documents required under Section 4 (A) of these Regulations covering their foreign employees from January 1, 2021 to November 30, 2021.

B. All POGO entities shall use the appropriate Alphanumeric Tax Code (ATC) for the remittance of their gaming tax and/or final withholding tax, whichever is applicable. Monthly filing of gaming tax return shall be made utilizing the available BIR Form until a new BIR Form for the gaming tax becomes available.

C. A separate revenue issuance for the guidelines and procedures for tax filing and remittances shall be issued pending availability of the eFPS to POGO entities.

D. A POGO entity duly registered with, and enjoying incentives granted by an Investment Promotion Agency (IPA) prior to the effectivity of R.A. No. 11534 shall continue to enjoy said incentives until the expiration of the transitory period under Section 311 of the NIRC of 1997, as amended, and as implemented by Sections 1, 2, and 3 of Rule 18 of the implementing rules and regulations of Title XIII of the NIRC of 1997, as amended, or the expiration of the license or accreditation, whichever comes earlier: *Provided*, that the POGO entity shall thereafter be subject to the applicable taxes under R.A. No. 11590 and these Regulations.

Notwithstanding the immediately preceding provision, said POGO entity shall be subject to the reportorial and compliance requirements under these Regulations and to other taxes under the NIRC of 1997, as amended, and other laws and issuances, as may be applicable.

SECTION 8. Repealing Clause. – All revenue rules and regulations and other revenue issuances or parts thereof, which are inconsistent with these Regulations, are hereby amended or modified accordingly.

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SECTION 9. Separability Clause. If any clause, sentence, provision or section of these Regulations shall be held invalid or unconstitutional, the remaining parts thereof shall not be affected thereby.

SECTION 10. Effectivity. – These Regulations shall take effect immediately.

CARLOS G. DOMINGUEZ
Secretary of Finance

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Recommending Approval:

CAESAR R. DULAY
Commissioner of Internal Revenue

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