

ADVISORY ON TAXATION OF POGO

PAGE NOS.

REPUBLIC ACT NO. 11590
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
National Internal Revenue Code of 1997,
As Amended, and for Other Purposes

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Republic Act No. 11590

National Internal Revenue Code, As Amended

An Act Taxing Philippine Offshore Gaming Operations

I. Licensees, Gaming Agents, and Service Providers



An **offshore gaming licensee** is an offshore gaming operator, whether organized abroad or in the Philippines, duly licensed/authorized, through a gaming license issued by PAGCOR or any special economic zone/tourism zone/freeport authority to conduct offshore gaming operations (Section 22(II), Tax Code, as amended).¹

An **offshore gaming licensee-gaming agent** is the Philippine representative of an offshore-based operator who shall act as a resident agent for the mere purpose of receiving summons, notices, and other legal processes and to comply with SEC disclosure requirements. The **offshore gaming licensee-gaming agent** shall not be involved with the business operations of the licensee and shall derive no income therefrom (Section 22(JJ), Tax Code, as amended).



An **accredited service provider** to an offshore gaming licensee is a juridical person organized within or outside the Philippines or a natural person, regardless of citizenship or residence, which provides ancillary services to an offshore gaming licensee. Such services may include, but is not limited to:

- Customer and technical relations and support;
- Information technology;
- Gaming software;
- Data provision;
- Payment solutions; and
- Live studio and streaming services (Section 27(G), Tax Code, as amended).

¹ Note: No offshore gaming license shall be issued by the Aurora Pacific Economic Zone and Freeport Authority and any license issued shall be transferred, regulated, and monitored by PAGCOR.

II. **Income Taxation of Alien Individuals Employed by an Offshore Gaming Licensee and Service Providers (Section 25(G), Tax Code, as amended)**

Person Liable

Alien individual regardless of residency who are employed and assigned in the Philippines, regardless of term or class of working permit or visa, by an offshore gaming licensee or its service provider

Tax Imposed

Final withholding tax of 25% on gross income; *Provided that* the minimum final withholding tax due for any taxable month shall not be lower than P12,500.00

Any income earned from all other sources within the Philippines shall be subject to the pertinent income tax imposed under the Tax Code, as amended

Inclusions to Gross Income

Basic salary/wages, annuities, compensation, remuneration, and other emoluments, whether in cash or in kind

Administrative Requirement

All foreign employees of offshore gaming licensees and service providers, regardless of nature of employment, shall have a tax identification number ("TIN")

All offshore gaming licensees and service providers shall submit to the BIR the original copy of the notarized contract of employment clearly stating the annual salary and other benefits and entitlements

Penalties

Failure to withhold and remit the tax imposed shall be governed by the Tax Code, as amended

The alien concerned may be subject to deportation and may be barred from reentering the Philippines, or blacklisted as a foreign employee

All offshore gaming licensees and service providers that employ or engage a foreign national without a TIN shall be liable, in addition to the payment and remittance of any corresponding taxes, penalties, interests, and surcharges due, for:

- Fine of P20,000 for every foreign national without a TIN; and
- Revocation of primary and other licenses; and/or
- Perpetual or temporary ban in employing or engaging foreign nationals

III. Income Taxation of Offshore Gaming Licensees (Sections 27(F) and 28(A)(1)(7), Tax Code, as amended)

Persons Liable

Duly licensed Philippine-based offshore gaming licensee (domestic corporation) and duly licensed foreign-based offshore gaming licensee (resident foreign corporation)

Tax Imposed

For Philippine-based offshore gaming licensee, non-gaming revenues shall be subject to income tax of 25% of the taxable income derived during each taxable year from all sources within and without the Philippines

For foreign-based offshore gaming licensee, non-gaming revenues from within the Philippines shall be subject to income tax of 25% of the taxable income derived during each taxable year

IV. Income Taxation of Accredited Service Providers to Offshore Gaming Licensees (Section 27(G), Tax Code, as amended)

Person Liable

Accredited service providers to offshore gaming licensees

Tax Imposed

Pay such rate of tax as imposed in Section 27(A) of the Tax Code, as amended, as well as all other applicable local and national taxes

Accredited service providers shall not be subject to the gaming tax imposed by Section 125-A

V. VAT Zero Rating on Sale of Goods and/or Services (Sections 106(A)(2) and 108(B)(9), Tax Code, as amended)

- Sale of goods or properties by VAT registered persons to offshore gaming licensees subject to the gaming tax under Section 125-A shall be imposed with VAT at 0%
- Sale of services performed in the Philippines by VAT registered persons to offshore gaming licensees subject to the gaming tax under Section 125-A, including accredited service providers, shall be imposed with VAT at 0%

VI. Gaming Tax on Services Rendered by Offshore Gaming Licensees (Section 125-A, Tax Code, as amended)

Tax Imposed

Gaming tax of 5% in lieu of all other direct and indirect internal revenue and local taxes, with respect to gaming income, based on the higher between:

- Entire gross gaming revenues/receipts; or
- Agreed predetermined minimum monthly revenue/receipts from gaming

Gross Gaming Revenue/Receipts

It shall mean gross wagers less payouts

PAGCOR or any special economic zone/tourism zone/freeport authority shall engage the services of a third-party audit platform to determine the gross gaming revenue/receipts and shall submit periodic reports, as certified by the third-party auditor, about the results of the operations of each offshore gaming licensee to the BIR

Manner and Date of Payment of Tax Directly remitted to the BIR not later than the 20th day following the end of each month

Regulatory Fees PAGCOR or any special economic zone/tourism zone/freeport authority may impose regulatory fees which shall not cumulatively exceed 2% of the higher between:

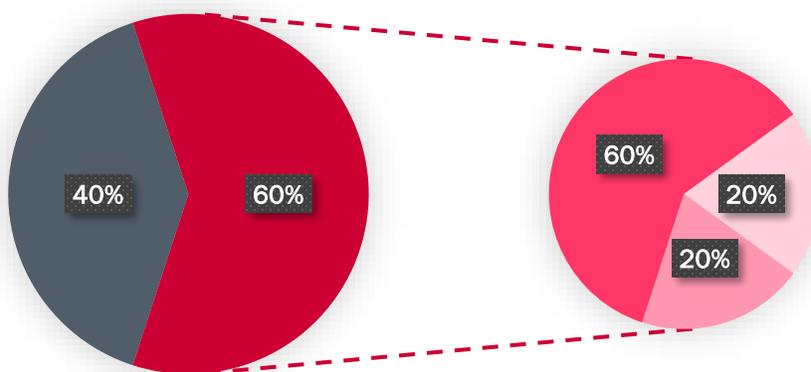
- Gross gaming revenues/receipts derived from gaming operations and similar related activities; or
- Predetermined minimum guaranteed fee

Penalties Revocation of license shall be imposed upon any offshore gaming licensee that will:

- Take wagers made in the Philippines
- Gravely fail to cooperate with third-party auditors

VII. Disposition of Incremental Revenues (Section 288(G), Tax Code, as amended)

60% of the total revenue collected from the gaming tax shall be allocated and used exclusively in the following manner:



- 60% for the implementation of the Universal Health Care Act (RA No. 11223)
- 20% to the Health Facilities Enhancement Program as determined by the DOH
- 20% to the Sustainable Development Goals as determined by NEDA

VIII. Oversight and Review

3 months from the effectivity of the Act and every 3 months thereafter, the BIR shall submit to Congress a report containing all pertinent information, including but not limited to:

- Reports by third-party auditors
- Collection performance data

IX. Implementing Rules and Regulations

The Secretary of Finance, upon recommendation of the CIR, shall promulgate the necessary rules and regulations within 90 days after the effectivity of this Act.

X. Effectivity

The Act shall take effect 15 days after its publication.

Source:
Republic Act No. 11590