

27 January 2020

REPRESENTATIVE FERDINAND MARTIN G. ROMUALDEZ

Chairperson
Committee on Rules
House of Representatives
Batasan Pambansa Complex, Constitution Hills
Quezon City, Philippines

Dear **Representative Romualdez**:

We are pleased to submit the Department's position on House Bill No. 5777, entitled:

"An Act Taxing Persons Engaged in Philippine Offshore Gaming Operations Amending for the Purpose Section 25 and Adding a New Section 150-C of the National Internal Revenue Code of 1997, as Amended"

This is without prejudice to the Department's submission of additional inputs.

With my best regards.

Very truly yours,



RAMON M. LOPEZ
Secretary

OFFICE OF THE SECRETARY

27 January 2020

REPRESENTATIVE JOEY S. SALCEDA

Chairperson
Committee on Ways and Means
House of Representatives
Batasan Pambansa Complex, Constitution Hills
Quezon City, Philippines

Dear **Representative Salceda**:

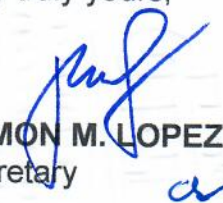
We are pleased to submit the Department's position on House Bill No. 5777, entitled:

“An Act Taxing Persons Engaged in Philippine Offshore Gaming Operations Amending for the Purpose Section 25 and Adding a New Section 150-C of the National Internal Revenue Code of 1997, as Amended”

This is without prejudice to the Department's submission of additional inputs.

With my best regards.

Very truly yours,



RAMON M. LOPEZ
Secretary

OFFICE OF THE SECRETARY

**DTI Position on
House Bill No. 5777¹**

“An Act Taxing Persons Engaged in Philippine Offshore Gaming Operations Amending for the Purpose Section 22, 25, and 119 of the National Internal Revenue Code of 1997, as Amended”

The Department supports the proposed bill’s intention to institutionalize a clear and definitive tax regime for Philippine Offshore Gaming Operators (POGOs) as a means to maximize government revenues and guide the monitoring and oversight of this industry.

With 60 approved POGOs² and 13,856 domestic POGO employees³, the offshore gaming industry provides a potential source of government revenue and local employment. However, the proliferation of unregistered POGOs and foreign employees has resulted in foregone revenue and issues of industry regulation.⁴

Moreover, the growth of POGOs has affected the real estate market by increasing the demand for office spaces.⁵ With an estimated occupancy of a million square meters of office space in Metro Manila alone, this influx is seen to result in rental price surges that may affect other business enterprises, including those in the information technology-business process management (IT-BPM) industry. Furthermore, the accompanying increase in foreign workers has also led to the ballooning of residential real-estate prices, which has risen by 10% in the 3rd quarter of 2019, with condominium prices in the National Capital Region (NCR) reaching an unprecedented growth of 34%.⁶ This rapid price inflation, if left unchecked, may expose the banking sector to risks as speculative price appreciation may induce developers to overinvest and consumers to take on more debt.⁷

In pursuing the objectives of the proposed legislation and addressing the issues surrounding the industry, the DTI submits its specific comments and recommendations on the stipulations, including:

¹ Substitute bill for House Bill No. 5267 per House of Representatives (HOR) Report No. 130 dated 10 December 2019

² List of Approved Philippine Offshore Gaming Operators as of 14 November 2019 released by the PAGCOR

³ Business Mirror: 1 in 5 POGO workers is Pinoy, accessed at <https://businessmirror.com.ph/2019/09/09/1-in-5-pogo-workers-is-pinoy-dole/>

⁴ Various news articles, accessed at <https://business.inquirer.net/279718/bir-shuts-down-unregistered-pogo-operator-in-eastwood>, <https://www.gmanetwork.com/news/money/companies/712028/bir-padlocks-unregistered-pogo-with-up-to-1-000-mostly-chinese-workers/story/>, <https://www.bworldonline.com/bir-targeting-unregistered-foreign-pogo-workers/>, and <https://business.inquirer.net/279718/bir-shuts-down-unregistered-pogo-operator-in-eastwood>

⁵ Colliers International: Market Intelligence 06 September 2019, accessed at <https://www.colliers.com/en-gb/philippines/insights/marketintelligence/sep62019>

⁶ Fitch Ratings: Philippine Property Price Surge Heightens Banking Risks, accessed at <https://www.fitchratings.com/site/pr/10107041>

⁷ Ibid

| Proposed Provision in House Bill No. (HBN) 5777 | DTI Comments/Recommendations |
|---|---|
| <p>“SECTION 1. Section 25 of the National Internal revenue Code of 1997, as amended, is hereby amended to add letter (G) to read as follows:</p> <p>XXX</p> <p>(G) ALIEN INDIVIDUAL EMPLOYED BY AN OFFSHORE GAMING LICENSEE- AN ALIEN INDIVIDUAL WHO IS A PERMANENT RESIDENT OF A FOREIGN COUNTRY AND WHO IS EMPLOYED AND ASSIGNED IN THE PHILIPPINES BY AN OFFSHORE GAMING LICENSEE, AS DEFINED IN SECTION 150-C OF THIS CODE, SHALL PAY A TAX OF TWENTY-FIVE PERCENT (25%) OF THE SALARIES, WAGES, ANNUITIES, COMPENSATION, REMUNERATION, AND OTHER EMOLUMENTS, SUCH AS HONORARIA AND ALLOWANCES RECEIVED FROM SUCH LICENSEE.</p> <p>XXX”</p> | <ul style="list-style-type: none"> • In view of the proposed stipulation in Section 2 that an Offshore Gaming Licensee (OGL) shall be considered engaged in doing business in the Philippines, the DTI is of the view that alien individuals employed by an OGL should be treated as a Non-resident Alien Engaged in Trade or Business within the Philippines, and is, thus, subjected to the same income tax schedule as individual citizens and resident alien individuals. • This is seen to further the objectives of the Comprehensive Tax Reform Program (CTRP), which aims to create a simpler, fairer, and more efficient tax system. |
| <p>“SECTION 2. A new Section designated as Section 150-C of the National Internal Revenue Code of 1997, as amended, is hereby added to read as follows:</p> <p>SECTION 150-C. TAX ON SERVICES RENERED BY OFFSHORE GAMING LICENSEES. – ANY PROVISION OF EXISTING LAWS, RULES OR REGULATIONS TO THE CONTRARY NOTWITHSTANDING,</p> | <ul style="list-style-type: none"> • While the DTI supports the codification of a tax regime for POGOs and recognizes the proposed rate of 5% as higher than the current 2% of gross gaming revenue (GRR) implemented by the Philippine Amusement and Gaming Corporation (PAGCOR) and similar to the 5% rate on gross income earned (GIE) imposed by economic zones, the DTI upholds the objectives of the CTRP, specifically of the proposed Corporate Income Tax and Incentives Rationalization Act (CITIRA), to provide for sustainable government revenue and a conducive investment environment. |

THERE SHALL BE LEVIED, ASSESSED AND COLLECTED A TAX EQUIVALENT TO FIVE PERCENT (5%) BASED ON THE GROSS REVENUE OR RECEIPTS DERIVED FROM GAMING OPERATIONS AND SIMILAR RELATED ACTIVITIES OF ALL OFFSHORE GAMING LICENSEES:

XXX

AN OFFSHORE GAMING LICENSEE SHALL REFER TO THE OFFSHORE GAMING OPERATOR, DULY LICENSED AND AUTHORIZED TO PROVIDE OFFSHORE GAMING SERVICES, WHICH MAY BE:

a. A PHILIPPINE-BASED OPERATOR, A DULY CONSTITUTED BUSINESS ENTERPRISE ORGANIZED IN THE PHILIPPINES; OR

b. AN OFFSHORE-BASED OPERATOR, A DULY CONSTITUTED BUSINESS ENTERPRISE ORGANIZED IN ANY FOREIGN COUNTRY, WHO WILL ENGAGE THE SERVICES OF THE PAGCOR-ACCREDITED SERVICE PROVIDER OR SUPPORT PROVIDER OF PAGCOR OR ANY SPECIAL ECONOMIC ZONE AUTHORITY OR TOURISM AUTHORITIES.

FOR PURPOSES OF THIS SECTION, AN OFFSHORE GAMING LICENSEE (OGL) SHALL BE CONSIDERED ENGAGED IN DOING BUSINESS IN THE PHILIPPINES.

- In line with this, we recommend subjecting POGOs to the same tax schedules proposed under the CITIRA.
- The DTI expresses its support to the proposal to expand the definitions covered by Republic Act (RA) No. 8424 or the National Internal Revenue Code of 1997 to clarify the scope and treatment of POGOs.
- In pursuit of consistency, the DTI recommends using the same terms and definitions utilized by PAGCOR in its Offshore Gaming Regulatory Manual published in July 2018, to wit:
 - "Philippine-based Operator" refers to a duly constituted business corporation organized in the Philippines who will either conduct offshore gaming operations themselves or engage the services of PAGCOR-accredited service providers;
 - "Foreign-based Operator" (in lieu of Offshore-Based Operator) refers to a duly constituted business corporation organized in any foreign country who will engage the services of a PAGCOR-accredited local gaming agent and service providers for its offshore gaming operations; and
 - "Local Gaming Agent" (in lieu of OGL-Gaming Agent) refers to a duly constituted business enterprise organized in the Philippines or a person of good repute and financial standing who will represent the foreign-based operator in the Philippines.

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| AN OGL-GAMING AGENT SHALL REFER TO THE REPRESENTATIVE IN THE PHILIPPINES OF AN OFFSHORE-BASED OPERATOR.” | |
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In addition, a cluster-based development strategy, wherein POGOs are geographically concentrated in pre-identified areas (e.g., Cagayan Special Economic Zone and Freeport), may be explored. This is seen to facilitate the monitoring of establishments, contain its inflationary effects on real estate prices, and promote regional development.

Given the various government agencies whose mandates cover different components of the industry [e.g., Philippine Amusement and Gaming Corporation (PAGCOR) to operate, authorize, and license games, Department of Labor and Employment's Bureau of Local Employment(DOLE-BLE) to issue an Alien Employment Permit (AEP), Department of Foreign Affairs Bureau of Immigration (DFA-BI) to issue special working permits, etc.], the inter-agency task force formed to monitor POGOs must expedite the harmonization of processes in order to address the issues surrounding the industry. This includes the database of foreigners being developed by the Department of Finance's Bureau of Internal Revenue (DOF-BIR) and DOLE to monitor the accuracy and comprehensiveness of taxation and the draft Joint Memorandum Circular to streamline the requirements for foreign workers.⁸

The Department reiterates its support for the proposed legislation's objectives to maximize government revenues and guide the monitoring and oversight of POGOs, taking into consideration its specific comments and recommendations.

Ruyapin Chanay

Bureau of Trade and Industrial Policy Research
27 January 2020

Ref: BTIPR-112019-317

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⁸ Stipulated in House Resolution No. 136