

# Tax Guidelines for E-Commerce Transactions in the Philippines

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# Taxation Concerns

- **Permanent Establishment Concept**

- Under most of the Philippine tax treaties, the BIR can tax the business profits of a foreign enterprise if it maintains a permanent establishment in the Philippines.
- The PE concept is defined as a "*fixed place of business through which the business of an enterprise is wholly or partly carried out*".
- With E-Commerce, the principle of physical business presence is somewhat diluted because foreign merchants can now exploit the domestic market without establishing a traditional physical presence.
- Thus, the question of whether or not a web site or computer server is considered a permanent establishment is still largely an open question.

# Taxation Concerns

- **On-line Professional Service**

- When actual service is being provided via the internet that involves the establishment of an ongoing relationship between the foreign service provider and a local customer, another taxing problem results.
- Examples of such service would be providing consultancy work on-line, online banking, stock trading, internet databases, and even on-line gambling.
- Transactions can be therefore occur directly between the parties and without the knowledge of tax authorities simply because there is no more need to establish physical presence in the country by the service provider.
- A tax loss in these areas should be anticipated.

# Taxation Concerns

- **Royalties**

- Royalties are typically defined in Tax Treaties as *"payments of any kind received as consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematographic films"*.
- It becomes now unclear how this definition applies to the electronically transmitted sale of digitized information, such as books, music, computer programs and images.
- Typically, software and other copyrighted materials are licensed, not sold. If sold electronically, when and under what circumstances shall we treat income from such sales as income from sale of goods or income from royalties. Or is a digitized product a good or service?
- To the best of our knowledge, this is still an issue perplexing the international community.

# Taxation Concerns

- **Audit and Collection**

- E-Commerce transactions are hard to track down and trace in the absence of papers on which to establish audit trails. As it is, the cost of discovery methods for conventional taxable transactions is already quite high.
- But with the increasing use of electronic processes, BIR conventional audit skills would have to be enhanced, at considerable expense, to match the required computerized auditing skills in an E-Commerce regime.

# Taxation Concerns

- **Audit Trail**

- There will be an increased pressure to reprogram the Bureau's current requirement on paper-based invoice and receipts.
- The BIR mandates all business establishments to issue these paper-based documents in order to ensure the declaration of the correct taxable sales.
- Thus, within the required two-year period, the Bureau would have to come up with regulations to permit on-line transmission of invoices or receipts.
- BIR would have to devise reasonable safeguards and conditions to ensure that all compliance requirements are met.
- Until such regulations are in place, the BIR would have no option but to enforce the existing conventional requirements.

# Taxation Concerns

- **Withholding Agents**

- One of the means by which the BIR enforces the collection of taxes is by generally making the payor of income as the withholding agent for the government.
- That is, if the payor or income is a corporation or a juridical entity since such entity is generally required to be the withholding agent.
- But this would be absent if more business-to-consumer transactions occur. However, for payments made through credit cards, the credit card companies are made as the withholding agents for the transaction.
- However, modern payment modes such as electronic fund transfer or stored value cards are still outside of the withholding tax regulations.

# BIR Revenue Memorandum Circular 55-2013

- Reiterating Taxpayers' Obligations in Relation to Online Business Transactions
- August 5, 2013



# Kinds of E-Commerce Transactions

- Business to Consumer (“B2C”) which involves online stores selling goods and services to final consumers
- Consumer to Consumer (“C2C”)
- Business to Business (“B2B”) which encompasses job recruitment, online advertising, credit, sales, market research, technical support, procurement and different types of training

# E-Commerce Business Tax Registration

- (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;

# E-Commerce Business Tax Registration

- (2) Secure the required Authority to Print (ATP) invoices/receipts and register books of accounts for use in business, which may either be:
  - a) Manual books of accounts, booklets of invoices/receipts, accounting records or loose-leaf of such;
  - b) Computerized Accounting System (CAS) and/or its components including e-Invoicing System under Revenue Memorandum Order (RMO) No. 21-2000 as amended by RMO No. 29-02.

# E-Commerce Business Tax Registration

- (3) Issue registered invoice or receipt, either manually or electronically, for every sale, barter, exchange, or lease of goods and properties, as well as for every sale, barter, or exchange of service.
- Said invoice or receipt shall conform to the information requirements prescribed under existing revenue issuances, and shall be prepared at least in duplicate,
  - the original to be given to the buyer and
  - the duplicate to be retained by the seller as part of the latter's accounting records;

# E-Commerce Business Tax Registration

- (4) Withhold required creditable / expanded withholding tax, final tax, tax on compensation of employees, and other withholding taxes.
- Remit the same to the Bureau at the time or times required, and
- Issue to the concerned payees the necessary Certificate of Tax Withheld.

# E-Commerce Business Tax Registration

- (5) File applicable tax returns on or before the due dates,
- Pay correct internal revenue taxes, and
- Submit information returns and other tax compliance reports such as the
  - Summary List of Sales/Purchases (SLS/P),
  - Annual Alpha List of Payees, etc., at the time or times required by existing rules and regulations;

# E-Commerce Business Tax Registration

- (6) Keep books of accounts and other business/accounting records within the time prescribed by law,
- 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.

# Neutral Tax Treatment

- The existing tax laws and revenue issuances on the tax treatment of purchases (local or imported) and sale (local or international) of goods (tangible or intangible) or services shall be equally applied with no distinction on whether or not the marketing channel is the internet / digital media or the typical and customary physical medium.



# Types of Online Business Transactions

(and taxes that shall apply)

# Online Shopping / Online Retailing

# Online Shopping / Online Retailing

- Consumers directly buy goods or services from a seller over the internet without an intermediary service.
- An online shop, e-shop, e-store, internet shop, web shop, web store, online store, or virtual store evokes the physical analogy of buying products or services at a bricks-and-mortar-retailer or shopping center.

# Online Merchant / Retailer

- If buyer's payment is thru credit card companies:  
The Online Merchant/ Retailer is obliged to
  - (a) issue electronically the BIR registered Invoice/OR for the full amount of the sale to the buyer;
  - (b) issue acknowledgment receipt to the credit card company for the amount received; and
  - (c) pay the commission of credit card company net of 10% Expanded Withholding Tax (EWT).

# Buyer / Customer

- The Buyer/Customer is required to
  - (a) receive the Payment Confirmation, under the name of the merchant, for the purchase price charged by the credit card company; and
  - (b) receive Invoice/OR from the merchant upon delivery of the goods or performance of service.

# Online Merchant / Retailer

- If buyer's payment is thru the banks: The Online Merchant/Retailer is obliged to
  - (a) issue Invoice/OR to the buyer for the payment of the goods/services; and
  - (b) issue acknowledgment receipt to the bank for the amount received.

# Buyer / Customer

- The Buyer/Customer is required to
  - (a) receive validated copy of the deposit slips made in the name of the merchant; and
  - (b) receive Invoice/OR from the merchant upon delivery of the goods or performance of service.

# Online Merchant / Retailer

- If buyer's payment is Cash on delivery or in the office of merchant (on sale of goods for pick-up by the customer): The Online Merchant/Retailer is required to
  - issue either electronically or manually the BIR registered Invoice/OR for the full amount of the sale to the buyer.



# Buyer / Customer

- Cash on delivery or in the office of merchant (on sale of goods for pick-up by the customer): The Buyer / Customer is required to
  - receive either the electronic or manual registered Invoice / OR (official receipt) for the full amount of payment made to merchant / retailer.

# Online Intermediary Service

# Online Intermediary Service

- Third party that offers intermediation services between two trading parties.
- Acts as a conduit for goods or services offered by a supplier to a consumer, and receives commission therefor.
- Relationship between the intermediary and the merchant shall be that of a principal-agent relationship which shall be governed by their agreement including but not limited to the amount of commission, manner of transmitting the same, etc.

# Online Intermediary Service

- If paid through credit card and banks
  - (a) issue the merchant's acknowledgement receipt (for goods) / OR (for services) for buyer to claim the goods/service
    - (in this case, the merchant acting as the principal shall assign a number of pads of such receipt to the intermediary/agent);
  - (b) ensure merchant delivers the goods to buyer with accompanying invoice or merchant performs the purchased service;
  - (c) issue OR to merchant for the full amount of the agreed commission, and reflecting therein the amount withheld by merchant.

# Online Intermediary is Merchant / Retailer when....

- When consumers buy goods or services from an intermediary service provider who controls such collection of buyers' payments, and thereafter receives commission from the merchant / retailer.
- When the intermediary markets multiple products for its own account (considered retailer or merchandiser as to the said products).

# Online Intermediary is Merchant / Retailer

- If paid thru credit card
  - (a) issue electronically the invoice/OR for the full amount of the sale to the buyer;
  - (b) issue acknowledgment receipt to the credit card company for the amount received;
  - (c) pay the commission of credit card company net of 10% EWT
  - (d) remit the balance to the merchant retailer net of intermediary's agreed mark-up/commission (include in the said remittance to merchant/retailer the 10% EWT to be remitted by merchant to the BIR)

# Online Intermediary is Merchant / Retailer

- If paid thru banks
  - (a) issue the invoice/OR for the full amount of the sale to the buyer;
  - (b) issue acknowledgment receipt to the bank for the amount received;
  - (d) remit the amount to the merchant retailer net of intermediary's agreed mark-up/ commission
    - (include in the said remittance to merchant/retailer the 10% EWT to be remitted by merchant to the BIR)

# Online Intermediary Sellers

- If paid by Cash on delivery or in the office of merchant (on sale of goods for pick-up by the customer): Online Intermediary Sellers are required to
  - secure the invoice / OR from the merchant before delivery of goods to buyer / performance of service and to
  - issue either electronically or manually the BIR registered Invoice/OR for the full amount of the sale to the buyer.
  - Issue OR for the amount of commission received, if agent



# Online Advertisement / Classified Ads

# Online Advertisement / Classified Ads

- Online advertising is a form of promotion that uses the internet to deliver marketing messages to attract customers.

# Online Advertisement / Classified Ads

- The Advertising Entity is obliged to
  - issue either electronically or manually the BIR registered invoice / OR to the merchant or retailer for the full amount of advertising fee (amount received is net of withholding).
  - Consequently, it shall receive from the advertiser/merchant at the prescribed time a Certificate of Creditable Tax Withheld at Source (Form 2307) for the amount of tax withheld.

# Online Advertisement / Classified Ads

- Merchant/Retailer as online advertiser is obliged to
  - (a) pay the online advertising entity for the advertising fee, net of 2% EWT;
  - (b) receive from said entity the BIR registered electronic copy or original copy of manually issued OR for the amount of advertising fee paid; and
  - (c) remit to BIR the EWT from the advertising entity.

# For credit card, banks, cash payment

- Same process for online shopping / online retail shall apply.

# Online Auction

# Online Auction

- These are auctions conducted through the internet via an online service provider that specifically hosts such auctions.
- Through this service, the seller sells the product or service to the person who bids the highest price.

# Auction Webstores

- If buyer's payment for voucher / coupon/ bid packs is: thru credit card companies: Auction Webstores are required to
  - (a) Issue electronically the BIR registered Invoice / OR (official receipt) to the buyer for the purchase price of bid packs (fee for right to participate in the bidding);
  - (b) Issue acknowledgment receipt to the credit card company for the amount received; and
  - (c) Pay the commission of credit card company net of 10% WT.



# Auction Webstores

- If buyer's payment for voucher / coupon/ bid packs is: thru banks: Auction Webstores are likewise required to
  - (a) issue Invoice/OR to the depositor-buyer for the payment of the bid packs; and
  - (b) issue acknowledgment receipt to the bank for the amount received

# Auction Webstores

- Sale of Auctioned Item to the highest bidder:  
Auction Webstores are obliged to
  - issue, either electronically or manually, the BIR registered Invoice/OR for the winning bid price to the buyer/bid winner.
  - The above paragraph shall apply for payments received thru the modes discussed.

# Payment Gateways

# Payment Gateways

- Payment gateways/payment settlement entities refer to
  - Banks or other organizations and third party settlement organizations that has contractual obligation to make payment to participating payees in the settlement of the transactions.
  - These include, but are not limited to, credit card companies, banks, financial institution, and bill paying services.

# Payment Gateways

- Credit Card Companies are obliged to
  - (a) Issue Payment Confirmation, in the name of the merchant-seller, for the purchase price charged to buyer;
  - (b) Remit to merchant-seller the price less EWT of  $\frac{1}{2}$  of 1%;
  - (c) Remit to BIR the EWT of  $\frac{1}{2}$  of 1%; and
  - (d) Receive agreed commission from merchant, net of EWT of 10%.

# Freight Forwarders and Online Website Administrators

# Payment Gateways

- Banks (over the counter) are obliged to
  - (a) issue validated bank deposit slips in the name of merchant to the depositor-buyer; and
  - (b) remit the amount to the merchant.

# Freight Forwarders and Online Website Administrators

- Freight Forwarders and Online Website Administrators are likewise obliged to
  - Issue, either electronically or manually, the BIR registered OR for the service fees paid by the merchant or advertisers.



# Penalties

- Any person engaged in internet commerce who fails to comply with applicable tax laws, rules and regulations shall be subject to
  - The imposition of penalties provided for under the existing laws, rules, and regulations, in addition to the imposition of penalties pursuant to the applicable Section/s under Chapters II and IV, Title X of the National Internal Revenue Code of 1997, as amended.

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