REVENUE MEMORANDUM CIRCULAR NO. 32-2022 issued on March 30, 2022 clarifies the franchise tax, Income Tax and Value-Added Tax (VAT) due from the Philippine Amusement and Gaming Corporation (PAGCOR), its licensees and contractees based on current laws and recent jurisprudence.

Presidential Decree (PD) No. 1869, as amended, classified PAGCOR's income into two: (1) income from its operations conducted under its Franchise, pursuant to Section 13 (2) (a) thereof (income from gaming operations); and (2) income from its operation of necessary and related services under Section 14 (5) thereof (income from other related services).

In *PAGCOR vs. BIR, et al,* the Supreme Court held that PAGCOR's income from its gaming operations shall be subject to the five percent (5%) franchise tax while its income from other related services shall be subject to the Corporate Income Tax rate provided in the National Internal Revenue Code (NIRC).

Accordingly, PAGCOR's income from its operations and licensing of gambling casinos, gaming clubs and other similar recreation or amusement places, gaming pools are, in lieu of all taxes, subject to the five percent (5%) franchise tax pursuant to PD No 1869, as amended. This includes, among others:

a. Income from its casino operations;
b. Income from dollar pit operations;
c. Income from bingo operations, including all variations thereof; and
d. Income from mobile bingo operations operated by it, with agents on commission basis. Provided, however, that the agent's commission income shall be subject to regular Income Tax, and consequently, to Withholding Tax under existing regulations.

Section 13 (2)(a) of P.D. No. 1869, as amended, clearly gives PAGCOR a blanket exemption to taxes on its income from its operations conducted under its Franchise (income from gaming operations) with no distinction on whether the taxes are direct or indirect, like VAT.

On the other hand, income from "other related operations/services" shall be subject to Corporate Income Tax, VAT and other applicable taxes under the NIRC, as amended. This includes, among others, but is not limited to:

a. Regulatory/license fees from licensed private casinos;
b. Regulatory/license fees from private bingo operations, including all variations thereof;
c. Regulatory/license fees from private internet casino gaming, internet sports betting and private mobile gaming operations;
d. Regulatory/license fees from private poker operations;
e. Regulatory/license fees from private junket operations;
f. Regulatory/license fees from SM demo units;
g. Regulatory/license fees from all other electronic derivatives of brick and mortar games regulated by PAGCOR;
h. Income from other necessary and related services, shows and entertainment.

PAGCOR's other income that are not connected with the foregoing operations are likewise subject to Corporate Income Tax, VAT and other applicable taxes under the NIRC, as amended.

PAGCOR is constituted as a withholding agent for the government as regards the compensation given to its employees subject to Withholding Tax on compensation, and for payments made to individuals or corporations subject to the Withholding Taxes at source as required under Chapter XIII and Section 57 of the NIRC, as amended.

PAGCOR must also collect a qualifying fee from players and remit the same in accordance with Executive Order No. 48, s. 1993, Revenue Regulations (RR) No. 06-93 and Revenue Memorandum Order (RMO) No. 14-93. Particularly, pursuant to Section 6 of RR No. 06-93, PAGCOR shall issue a check, payable to the Bureau of Treasury and to the credit of the account of the BIR, equivalent to the amount of collections for a particular week. This check, together with the necessary supporting documents prescribed by the BIR, shall be issued to the Bureau of Treasury not later than Tuesday following each week. The Bureau of Treasury shall then prepare monthly the corresponding Journal voucher and any other necessary document in favor of the BIR for the latter to record the amount of collections in its book of accounts.

PD No. 1869, as amended, expressly provides that the payment of the five percent (5%) franchise tax of PAGCOR inures to the benefit of its Contractees and Licensees. *(Bloomberry Resorts and Hotels, Inc., v. BIR) viz:*

> *"Sec. 13. – Exemptions:*
>
> *(2) Income and other taxes –*
>
> *(b) Others: <u>The exemptions herein granted for earnings derived from the operations conducted under the franchise specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies, shall inure to the benefit of and extend to corporation(s), association(s), agency(ies), or individual(s) with whom the Corporation or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise</u> and to those receiving compensation or other remuneration from the Corporation or operator as a result of essential facilities furnished and/or technical services rendered to the Corporation or operator.*
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> *The fee or remuneration of foreign entertainers contracted by the Corporation or operator in pursuance of this provision shall be free of any tax."*

Hence, following the ruling in *Bloomberry*, like PAGCOR, its Contractees and Licensees shall be exempt from the payment of Corporate Income Tax realized from the operation of casinos upon payment of the five (5%) franchise tax since the law is clear that said exemption inures and extends to their benefit. For VAT purposes, however, the ruling of the Court in *CIR v. Acesite (Philippines) Hotel Corporation*, as further clarified by the Court in the recent case of *Thunderbird Pilipinas Hotel & Resorts, Inc. v. CIR*, is instructive. There, the Court clarified that PAGCOR, pursuant to its Charter, is also exempt from indirect tax, like VAT, on its gaming operations. The tax exemption of PAGCOR extends only to those individuals or entities that have <u>contracted with PAGCOR</u> (PAGCOR Contractees and not Licensees) in connection with PAGCOR's gaming operations. This is to proscribe any indirect tax, like VAT, that may be shifted to PAGCOR.

Thus, pursuant to *Acesite* and *Thunderbird* rulings, for PAGCOR Licensees, their revenues from gaming operations, involving sale of goods and/or services in the course of trade or business, are generally subject to VAT. In the event, however, that they have also contracted with PAGCOR in connection with the latter's gaming operations, then, the goods they provided and/or services performed to PAGCOR in relation to such gaming operations

are subject to zero percent (0%) VAT pursuant to Sections 106 (A)(2)(b) and 108 (B)(3) of the NIRC of 1997, as amended.

On the other hand, the income realized by PAGCOR's Licensees from "other related services/operations" shall be subject to the regular Corporate Income Tax, VAT and other applicable taxes under the NIRC, as amended.

For Licensees that are located in Ecozones/Freeports, their income realized from other related services/operations shall be subject to the tax regime applicable to said Licensees, that is, 5% Gross Income Tax (GIT) or Income Tax Holiday (ITH), as the case may be, provided that said other related services/operations are covered by their registered activity with the concerned Investment Promotion Agency (IPA). If they are under 5% GIT, then, they are exempt from regular Corporate Income Tax and VAT. On the other hand, if they are under ITH, then, they are also exempt from the regular Corporate Income Tax. They are, however, subject to VAT. On their income realized from related services/operations which are not covered with their registered activity or activities with the concerned IPA, the same shall be subject to the regular Corporate Income Tax, VAT and other applicable taxes under the NIRC. Their income from gaming operations, however, shall not be subject to the GIT, ITH or Corporate Income Tax but remains subject to the 5% Franchise Tax in accordance with PD No. 1869, as amended, and the aforecited jurisprudence.

As above-mentioned, for VAT purposes, Licensees' revenues from gaming operations, involving sale of goods and/or services in the course of trade or business, are generally subject to VAT. If, however, they have also contracted with PAGCOR in connection with the latter's gaming operations, then, the goods they provided and/or services performed to PAGCOR in relation to such gaming operations are subject to zero percent (0%) VAT pursuant to Sections 106(A)(2)(b) and (108)(B)(3) of the NIRC of 1997, as amended.

The revenues of PAGCOR Contractees derived from its contract with PAGCOR in connection with the latter's gaming operations shall be exempt from the regular Corporate Income Tax upon payment of the 5% Franchise Tax in accordance with PD No. 1869, as amended, and the aforecited jurisprudence. However, the goods they provided and/or services performed to PAGCOR in relation to such gaming operations are subject to zero percent (0%) VAT pursuant to Sections 106(A)(2)(b) and 108(B)(3) of the NIRC of 1997, as amended.

PAGCOR's Contractees whose income consists of non-gaming revenues or income from other related services are subject to the regular Corporate Income Tax, VAT and other applicable taxes under the NIRC of 1997, as amended.

The license/regulatory fees paid by Licensees to PAGCOR is different and distinct from the 5% franchise tax payable to the BIR. The license fee is being paid to PAGCOR by virtue of the license to establish and operate a casino and does not include the franchise tax mandated to be paid to the government under Section 13(2)(a) of PD No. 1869, as amended. Such franchise tax is payable directly to the BIR, specifically to the concerned Revenue District Office where the Licensee is registered. The Licensee shall remit the franchise tax to the BIR using BIR Form 2553 indicating the Alphanumeric Tax Code (ATC) OT 010.