REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Sections 2, 5 and 266, Tax Code	0T-363-2022 AUG 12 2022

Person to Contact: Chief, Law & Legislative Division
Tel. Nos. 926-55-36/927-09-63
Date: ____________________

THE LAW FIRM OF MARIO A. ORETA & PARTNERS
10th Floor, Alphaland Southgate Tower
2258 Chino Roces Avenue
Corner EDSA
Makati City, Philippines

Attention: **ATTY. MARIO A. ORETA**
Counsel of Shopee Philippines, Inc.

Gentlemen:

This refers to your request on behalf of Shopee Philippines, Inc. ("**SPI**") for a clarification whether SPI's disclosure of: (1) the sales earned by Talipapa Commerce Ventures, Inc. ("**TCVI**") for taxable year 2019; and (2) a list of all of its partner merchants/sellers for calendar years 2016-2020, in compliance with the request of the Bureau of Internal Revenue ("**BIR**") will violate Republic Act ("**RA**") No. 10173, otherwise known as the "Data Privacy Act of 2012" ("**DPA**").

Background

1. On October 13, 2020, a Letter of Authority ("**LOA**") was issued to TCVI authorizing the conduct of an audit examination of TCVI's books of accounts and other accounting records for the period from January 1, 2019 to December 31, 2019.

2. On June 7, 2021, the BIR sent a letter to SPI requesting the amount of sales earned by TCVI via SPI's online platform for taxable year 2019 ("**TCVI's Information**").

3. On December 6, 2021, SPI, through its legal counsel, filed a letter relating to the BIR's request for a list of SPI's partner merchants/sellers for calendar years 2016-2020 ("**Partners' Information**") (collectively with TCVI's Information, the "**Requested Information**"), clarifying whether the disclosure of the Requested Information will be violative of the provisions of the DPA.

In reply, please be informed that Section 4 (e) of the DPA expressly states that the provisions of the DPA does not apply to information necessary in order to carry out the functions of public authority, to *wit:*[1]

"SEC. 4. Scope. – xxx

xxx xxx xxx

[1] Section 5 (d) of IRR.

This Act does not apply to the following:

xxx xxx xxx

(e) Information necessary in order to carry out the functions of public authority which includes the processing of personal data for the performance by the independent, central monetary authority and law enforcement and regulatory agencies of their constitutionally and statutorily mandated functions. Nothing in this Act shall be construed as to have amended or repealed Republic Act No. 1405, otherwise known as the Secrecy of Bank Deposits Act; Republic Act No. 6426, otherwise known as the Foreign Currency Deposit Act; and Republic Act No. 910, otherwise known as the Credit Information System Act (CISA);" (Underscoring supplied)

Section 3 of the Implementing Rules and Regulations ("**IRR**") of DPA[2] defines public authority as any government entity created by the Philippine Constitution or law, and vested with law enforcement or regulatory authority and functions.

In this regard, relevant provisions of the National Internal Revenue Code of 1997, as amended ("**Tax Code**"), relating to the powers and duties of the BIR are as follows:

*"**SEC. 2. Powers and Duties of the Bureau of Internal Revenue.** – The Bureau of Internal Revenue shall be under the supervision and control of the Department of Finance and its powers and duties shall comprehend the assessment and collection of all national internal revenue taxes, fees, and charges and the enforcement of all forfeitures, penalties, and fines connected therewith, including the execution of judgments in all cases decided in its favor by the Court of Tax Appeals and the ordinary courts. The Bureau shall give effect to and administer the supervisory and police powers conferred to it by this Code and other laws.*

xxx xxx xxx

*SEC. 5. **Power of the Commissioner to Obtain Information, and to Summon, Examine, and Take Testimony of Persons.** – In ascertaining the correctness of any return, or in making a return when none has been made, or in determining the liability of any person for any internal revenue tax, or in collecting any such liability, or in evaluating tax compliance, the Commissioner is authorized:*

(A) To examine any book, paper, record, or other data which may be relevant or material to such inquiry;

(B) To obtain on a regular basis from any person other than the person whose internal revenue tax liability is subject to audit or investigation, or from any office or officer of the national and local governments, government agencies and instrumentalities, including the Bangko Sentral ng Pilipinas and government-owned or -controlled corporations, any information such as, but not limited to, costs and volume of production, receipts or sales and gross incomes of taxpayers, and the names, addresses, and financial statements of corporations, mutual fund companies, insurance companies, regional operating headquarters of multinational companies, joint accounts, associations, joint ventures or consortia and registered partnerships, and their members: xxx" (Underscoring supplied)

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[2] August 24, 2016.

Based on the afore-cited provisions of law, it shows that the BIR, through the Commissioner of Internal Revenue (**"CIR"**), being a public authority performing its State functions, has the right and/or authority to obtain information from any person (individual or juridical person) in order to ascertain the correctness of any return, or to make a return when none has been made, or to determine the liability of any person for any internal revenue tax. And the CIR's exercise of such right and/or authority does not violate any provisions of the DPA because the information requested by the CIR is outside of the coverage of the DPA.

It bears stressing that the functions of the BIR are of prime importance since taxes are the lifeblood of the government and their prompt and certain availability is an imperious need.[3] Without taxes, the government would be paralyzed and will not be able to defray the expenses necessary to sustain governmental functions and maintain a civilized society.

Applied, considering that the Requested Information relates to the performance of the BIR's functions as a public authority, the disclosure of the same is not violative of the DPA as it is outside of its coverage.

To reiterate, the CIR is authorized by the Tax Code to obtain information from any person in order to evaluate tax compliance of taxpayers and determine any liability for internal revenue tax. When it comes to the processing of collected information, the BIR is strictly using all its collected information only in connection with its lawful functions and activities of administering the Tax Code and other existing laws and other tax laws and in accordance with existing legislations such as the DPA and RA No. 10021,[4] otherwise known as the "Exchange of Information on Tax Matters Act of 2009." To ensure compliance of BIR's officers, it has issued a data privacy manual and various rules and regulations to prescribe the policies and guidelines for personal data protection and security in compliance with the DPA.[5]

Further, Section 19 of the DPA expressly states that the rights granted to data subjects listed in Chapter IV of the DPA does not apply to processing of information gathered for the purposes of investigations relating to the tax liabilities of the data subjects, to *wit*:

> *"SEC. 19. Non-Applicability. – The immediately preceding sections are not applicable if the processed personal information are used only for the needs of scientific and statistical research and, on the basis of such, no activities are carried out and no decisions are taken regarding the data subject: Provided, That the personal information shall be held under strict confidentiality and shall be used only for the declared purpose. <u>Likewise, the immediately preceding sections are not applicable to processing of personal information gathered for the purpose of investigations in relation to any criminal, administrative or tax liabilities of a data subject.</u>"* (Underscoring supplied)

Having regard of all the above disquisitions, it is clear that the spirit and intention of the legislators in passing the DPA is to exclude from its coverage all information that are necessary for the BIR to conduct audit and investigation relating to any tax liabilities of taxpayers (such as the Requested Information). It is a well settled rule that a statute must be read according to its spirit or intent.[6]

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[3] *Valley Trading Co., Inc. v. Court of First Instance of Isabela, Branch II*, G.R. No. L-49529, March 31, 1989.
[4] An Act to Allow the Exchange of Information by the Bureau of Internal Revenue of Tax Matters Pursuant to Internationally-Agreed Tax Standards, Amending Sections 6(F), 71 and 270 of the National Internal Revenue Code of 1997, as Amended, and for Other Purposes, July 27, 2009.
[5] Revenue Memorandum Order No. 001-2020, January 6, 2020; Revenue Memorandum Circular No. 094-2017, October 4, 2017.
[6] DOF Opinion No. 007-2018, October 22, 2018.

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Thus, this Office is of the opinion that disclosure of the Requested Information by SPI to the BIR is legal and not covered by the provisions of the DPA.

Finally, please be informed that pursuant to Section 266 of the Tax Code, failure to produce or furnish information as required under the provisions of the Tax Code, shall, upon conviction, be punished by a fine of not less than five thousand pesos (PhP5,000.00) but not more than Ten Thousand Pesos (PhP10,000.00) and suffer imprisonment of not less than one (1) year but not more than two (2) years.

Please be guided accordingly.

Very truly yours,

LILIA CATRIS GUILLERMO
Commissioner of Internal Revenue

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Copy furnish:

REGIONAL DIRECTOR
Revenue Region No. 8A – Makati City