Tax Bulletin

Special Issue on Republic Act No.11534 The Corporate Recovery and Tax Incentives for Enterprises ("CREATE") Act

In everything we do, we nurture leaders and enable businesses for a better Philippines.

#SGVforABetterPhilippines

SGV 75 YEARS ABOVE & BEYOND

Highlights

This Act aims to:

- Improve the equity and efficiency of the corporate tax system by lowering the rate, widening the tax base, and reducing tax distortions and leakages;
- Develop, subject to the provisions of this Act, a more responsive and globally-competitive tax incentives regime that is performance-based, targeted, time-bound, and transparent;
- Provide support to businesses in their recovery from unforeseen events such as an outbreak of a communicable disease or a global pandemic, and strengthen the nation's capability to address similar circumstances in the future; and
- Create a more equitable tax incentive system that will allow for inclusive growth and generation of jobs and opportunities in all the regions of the country and ensure access and ease in the grant of these incentives, especially for applicants in the least developed areas.

I. Adjustment in the Corporate Tax and Other Taxes

- **Final Taxes on Nonresident Alien Engaged in Trade or Business Within the Philippines**

  Winnings (except those amounting to P10,000 or less from the Philippine Charity Sweepstakes Office (PCSO) games which shall be exempt) shall be taxed at 20% on the total amount.

  Exemption of Lotto winnings from final taxes has been deleted.

- **Definitions**. The term corporation shall include One Person Corporations (OPCs).

- **Regular Corporate Income Tax.**

  1. *Effective 1 July 2020*, the tax rate for **domestic corporations** depends on its total assets and taxable income. The following table will summarize the tax rate to be used:

TOTAL ASSETS	NET TAXABLE INCOME	TAX RATE
P100 Million and below	P5 Million and below	20%
ALL OTHER DOMESTIC CORPORATIONS		25%

     The amount of Total Assets does not include the value of land on which the particular business entity's office, plant and equipment are situated during the taxable year for which the tax is imposed.

     For corporations adopting the fiscal-year accounting period, the taxable income shall be computed without regard to the specific date when specific sales, purchases and other transactions occur. Income and expenses for the fiscal year shall be deemed to have been earned and spent equally for each month of the period.

  2. *Effective 1 July 2020*, the rate of income tax on **resident foreign corporations** has been amended from 30% to 25% on taxable income sourced from the Philippines

  3. *Effective 1 January 2021*, the rate of income tax on **non-resident foreign corporations** has been amended from 30% to 25% on gross income sourced from the Philippines

- **Optional 15% Tax Based on Gross Income.** CREATE Act repealed the provision that allows corporations to have the option to be taxed at 15% of gross income after certain conditions have been satisfied.

- **Interest Arbitrage.** Under the CREATE Act, the allowable deduction for interest expense shall be reduced by 20% of the interest income subjected to final tax.

  If interest income tax is adjusted in the future, the rate shall be adjusted accordingly.

- **Minimum Corporate Income Tax (MCIT).** *Effective 1 July 2020 until 30 June 2023*, the MCIT rate shall be 1% on gross income applicable to both domestic corporations and resident foreign corporations. Thereafter, it shall revert to the 2% MCIT rate.

- **Foreign-sourced Dividends – Domestic Corporation.** Foreign-sourced dividends remitted into the Philippines or actually received by a domestic corporation shall be EXEMPT subject to the following conditions:

  1. The domestic corporation holds directly at least 20% of the outstanding shares of the foreign corporation and has held the shareholdings for a minimum of two years at the time of dividend distribution;

  2. Funds are reinvested in the business operations of the domestic corporation in the Philippines;

  3. Funds are reinvested within the next taxable year from the time the dividends were received; and

  4. Reinvestment shall be limited to funding the working capital requirements, capital expenditures, dividend payments, investment in domestic subsidiaries and infrastructure projects.

- **Regional Operating Headquarters (ROHQ).** *Effective 1 January 2022*, ROHQs shall be subject to the regular corporate income tax.

- **Final Taxes on Foreign Corporation**

  The tax on interest income from a depository bank under the expanded foreign currency deposit system (FCDS) is increased from 7.5% to 15%.

  In addition, the capital gains tax rate on sale of shares of stock not traded in the stock exchange has been increased to 15%, from 5%/10%.

- **Interest from Deposits and Yield - Resident Foreign Corporation.** Interest from any currency bank deposit and yield or any other monetary benefit from deposit substitutes, from trust funds and similar arrangements and royalties derived from Philippine sources shall be taxed at 20% while interest income from a depository bank under the expanded foreign currency deposit system shall be taxed at 15% on such interest income.

- **Offshore Banking Units (OBUs).** CREATE Act removed the provision that imposes tax on income derived by OBUs from foreign currency transactions with nonresidents as well as interest income derived from foreign currency loans granted to residents to transact with OBUs.

- **Intercorporate Dividends – Non-resident Foreign Corporation.** Tax credit against the tax due shall be 15%, which represents the difference between the regular income tax rate and the 15% tax on dividends. Provided, that *effective 1 July 2020*, the credit against the tax due shall be equivalent to the difference between the regular income tax rate provided under Section 28 (B)(1) of this Act (20% / 25%) and the 15% tax on dividends.

- **Improperly Accumulated Earnings Tax (IAET).** Section 29 of the Tax Code of 1997 on the imposition of IAET has been repealed.

- **Tax on Proprietary Educational Institutions and Hospitals.** Proprietary Educational Institutions and Hospitals which are non-profit shall pay a tax of 1% on their taxable income beginning *1 July 2020 until 30 June 2023*. Thereafter, it shall revert to 10%.

- **Tax on Government-owned or controlled corporations, agencies or instrumentalities.** Government Service Insurance System, Social Security System, *Home Development Mutual Fund*, Philippine Health Insurance Corporation and local water districts shall be exempt from income tax. All other corporations, agencies, or instrumentalities owned or controlled by the Government shall be taxed at 25% / 20% on the taxable income.

- **Deductions from Gross Income.** Additional deduction of ½ of the value of labor training expenses incurred for skills development of enterprise-based trainees enrolled in public senior high schools, public higher education institutions or public technical and vocational institutions provided that they are:

  1. Covered by an Apprenticeship Agreement under the Labor Code;

  2. With proper certification from DepEd, TESDA, or CHED for enterprise-based training of students from public educational institutions; and

  3. Deduction must not exceed 10% of direct labor wage.

- **Section 40 (C) (2) on Tax Deferral Scheme.** Generally, the amount of gain or loss upon the sale or exchange of property shall be recognized.

  As an exception, no gain or loss shall be recognized on a corporation or on its stock or securities if such corporation is a party to a reorganization and exchanges property in pursuance of a plan of reorganization solely for stock or securities in another corporation that is a party to the reorganization.

  Reorganization means:

  1. A corporation, which is a party to a merger or consolidation, exchanges property solely for stock in a corporation, which is a party to the merger or consolidation; or

  2. The acquisition by one corporation, in exchange solely for all or a part of its voting stock, or in exchange solely for all or part of the voting stock of a corporation which is in control of the acquiring corporation, of stock of another corporation if, immediately after the acquisition, the acquiring corporation has control of such other corporation whether or not such acquiring corporation had control immediately before the acquisition; or

  3. The acquisition by one corporation, in exchange solely for all or a part of its voting stock or in exchange solely for all or part of the voting stock of a corporation which is in control of the acquiring corporation, of substantially all of the properties of another corporation. In determining whether the exchange is solely for stock, the assumption by the acquiring corporation of a liability of the others shall be disregarded; or

4. A recapitalization, which shall mean an arrangement whereby the stock and bonds of a corporation are readjusted as to amount, income, or priority or an agreement of all stockholders and creditors to change and increase or decrease the capitalization or debts of the corporation or both; or

5. A reincorporation, which shall mean the formation of the same corporate business with the same assets and the same stockholders surviving under a new charter.

No gain or loss shall be recognized if property is transferred to a corporation by a person, alone or together with others, not exceeding four persons, in exchange for stock or units of participation in such a corporation of which, as a result of such exchange, the transferor or transferors, collectively, ***gains or maintains control*** of said corporation.

The sale of exchanges of property used for business for shares of stocks in pursuance of a plan of reorganization shall not be subject to value-added tax (VAT).

Prior Bureau of Internal Revenue (BIR) confirmation or tax ruling shall not be required for purposes of availing of the tax exemption.

Control shall mean ownership of stocks in a corporation after the transfer of property possessing at least 51% of the total voting power of all classes of stocks entitled to vote. The collective and not the individual ownership of all classes of stocks entitled to vote of the transferor or transferors shall be used in determining the presence of control.

- **VAT-Exempt Transactions**. Following transactions shall be exempt from VAT.

1. Sale, importation, printing or publication of books, and any newspaper, magazine, journal, review bulletin, or any such educational reading material covered by the UNESCO agreement on the importation of educational, scientific and cultural materials, *including the digital or electronic format*. Provided the materials are not devoted principally to the publication of paid advertisements.

2. Sale or importation of prescription drugs and medicines for:

   - Diabetes, high cholesterol, and hypertension beginning 1 January 2020.
   - Cancer, mental illness, tuberculosis, and kidney diseases *beginning 1 January 2021*.

   The DOH shall issue a list of approved drugs and medicines.

3. Sale or importation of the following *beginning 1 January 2021 to 31 December 2023*:

   I. Capital equipment, its spare parts and raw materials, necessary for the production of personal protective equipment components for COVID-19 prevention;
   II. All drugs, vaccines and medical devices specifically prescribed and directly used for the treatment of COVID-19; and
   III. Drugs for the treatment of COVID-19 approved by FDA for use in clinical trials, including raw materials directly necessary for the production of such drugs.

   For item (I) DTI shall certify that these are not locally available or insufficient in quantity or not in accordance with the quality or specification required.

   For item (II), DOH shall issue a list of prescription drugs and medical devices covered.

   Exemption is subject to post audit by the BIR or the BOC, as may be applicable.

- **Other Percentage Tax**. The Other Percentage Tax rate shall be 1% *effective July 1, 2020 until June 30, 2023*. Thereafter, it shall revert to 3%.

- **Withholding Tax at Source**. DOF shall review, at least *once every three years*, the rates, regulations and processes for withholding of creditable taxes that adversely and materially impact the taxpayers.

II. Rationalization of Fiscal Incentives

Section 16 of the CREATE Act introduced a New Title to the Tax Code of 1997, as amended, that shall be read as Title XIII: Tax Incentives. The existing Titles XIII and XIV shall be re-sectioned and re-titled accordingly.

- The New Title covers all existing Investment Promotion Agencies (IPA) as defined in the Act or related laws unless otherwise specifically exempted from the coverage of the Act. The IPAs shall maintain their functions and powers as provided in their respective special laws except to the extent modified by the provisions of the CREATE Act.

- **Granting Authority**. Fiscal Incentives Review Board (FIRB) shall approve/disapprove the grant of fiscal incentives upon recommendation of the IPA but shall delegate the grant of tax incentives to the IPA, as follows:

Amount of Investment Capital	Granting Authority
Above P1 Billion	FIRB
P1 Billion and below	Delegated to the IPA

FIRB may increase the threshold amount of P1 Billion.

- **Expanded Powers and Functions of FIRB**.

The expanded functions and powers of the FIRB shall include the following:

1. To exercise policy making and oversight functions on the administration and grant of tax incentives by the IPAs and other government agencies administering tax incentives, particularly:

    a. Determine target performance metrics;
    b. Review and audit compliance of other government agencies administering tax incentives and impose sanctions;
    c. Determine the minimum contiguous land area that vertical economic zones should comply with;
    d. Conduct regular monitoring and evaluation of investment and non-investment tax incentives; and
    e. Check and verify, if necessary, the compliance of registered business enterprises (RBEs) with the terms and conditions of their availment.

2. To approve applications for tax subsidies to government-owned or controlled corporations, government instrumentalities, government commissaries, and state universities and colleges;

3. To formulate and approve place-specific strategic investment plans during periods of recovery from calamities and post-conflict situations and recommend incentives to the President;

4. To cancel, suspend, or withdraw the enjoyment of fiscal incentives of concerned RBEs on its own initiative or upon recommendation of the IPA for material violation of the conditions imposed in the grant of incentives and endorse the RBEs whose incentives are cancelled, suspended, or withdrawn to the concerned revenue agencies for the assessment and collection of taxes and duties due commencing from the 1st year of availment;

5. To cancel, suspend, or withdraw the enjoyment of tax subsidy of concerned government-owned or controlled corporations, government instrumentalities, government commissaries, and state universities and colleges and when necessary, endorse the same to the concerned revenue agencies for the assessment and collection of taxes and duties;

6. To require IPAs and other government agencies administering tax incentives to submit, regularly or when requested, summaries of approved investment and incentives granted and firm or entity-level tax incentives and benefits data;

   For this purpose, FIRB shall maintain a masterlist of registered products and services for export or domestic consumption that are entitled to incentives. DTI, in coordination with relevant regulatory bodies, shall cause the registration and reporting by RBEs of the following:

   a. types of services rendered whether domestically or to foreign clients; and
   b. types of products manufactured domestically, products imported and sold locally and products exported.

7. To publish data showing the amount of tax incentives, tax payments, and other related information including benefits data per firm;

8. To obtain information, summon, examine, inquire and receive from other government agencies administering tax incentives, government-owned or controlled corporations, government instrumentalities, government commissaries, and state universities and colleges and local government units, relevant or material data to resolve the issues arising from the approval, disapproval, cancellation, suspension, withdrawal or forfeiture of tax subsidy or in imposing penalties;

9. To submit annual reports to the Office of the President as part of the budget process covering its policy and activities in the administration of the CREATE Act;

10. To decide on issues, on its own initiative or upon recommendation of the IPA, after due hearing, concerning the approval, disapproval, cancellation, suspension, withdrawal or forfeiture of tax subsidy;

    For this purpose, FIRB shall decide on the matter within 90 days from the date when the FIRB declares the issues submitted for resolution. If the decision of FIRB adversely affects the RBE, the RBE may appeal the decision to the Court of Tax Appeals within 30 days from receipt thereof.

11. To promulgate implementing rules and regulations;

12. To recommend to the President the grant of appropriate non-fiscal incentives in accordance with the Strategic Investment Priority Plan (SIPP) for highly desirable projects or very specific industrial activities;

13. To adopt policies for the development and expansion of the domestic supply chain;

14. To exercise all other powers necessary or incidental to attain the purposes of CREATE Act and other laws vesting additional functions on the FIRB.

The tax and duty incentives granted through legislative franchises shall be excepted from the above-enumerated powers of the FIRB to review, withdraw, suspend, or cancel tax incentives, and subsidies.

- **Composition of the FIRB.**

  The FIRB shall be composed of the following:

Chairperson	Secretary of Finance
Co-Chairperson	Secretary of Trade and Industry
Members	▸ Executive Secretary of the Office of the President ▸ Secretary of Budget and Management ▸ Director General of the National Economic and Development Authority

  The FIRB shall have a technical committee which will support the Board and perform functions as may be assigned and shall be composed of the following:

Chairperson	Undersecretary of Finance
Members	▸ Undersecretary or Assistant Secretary of the Office of the Executive Secretary ▸ Undersecretary of Trade and Industry and Board of Investments Managing Head or Assistant Secretary of Trade and Industry ▸ Undersecretary or Assistant Secretary of Budget and Management ▸ Deputy or Assistant Director General of the National Economic Development Authority ▸ Commissioner or Deputy Commissioner of Internal Revenue ▸ Commissioner or Deputy Commissioner of Customs ▸ Commissioner of the Philippine Competition Commission ▸ Director General or Chairperson or Administrator of the IPAs
Secretariat	This shall be headed by an assistant Secretary of Finance and staffed by the National Tax Research Center

  The participation of the IPA representative in deliberations and decision-making processes of the technical committee shall be limited to the matters concerning their IPA.

- **Structure and Staffing Pattern**. The National Tax Research Center, as secretariat of FIRB, shall create 3 additional groups, namely:

  1. Fiscal Incentives Management Group;
  2. Monitoring and Evaluation Group; and
  3. Legal Group

  The FIRB secretariat is authorized to determine its organizational structure and staffing pattern and create such services, divisions, and units, as it may require or deem necessary in the future subject to the approval by the department of Budget and Management.

  This shall not modify the structure and staffing pattern of the IPAs or affects their power to maintain or determine their respective organizational structure and staffing pattern.

- **Enterprises Defined.**

  Export Enterprise refers to any individual, partnership, corporation, Philippine branch of a foreign corporation or other entity organized and existing under Philippine laws and registered with the IPA to engage in manufacturing, assembling or processing activities, and services such as information technology (I.T.) activities and business process outsourcing (BPO), and resulting in the direct exportation, and/or sale of its manufactured, assembled or processed product or I.T./BPO services to another registered export enterprise that will form part of the final export product or export service of the latter, of at least 70% of its total production or output.

Domestic Market Enterprise refers to any enterprise registered with the IPA other than export enterprise.

- **Incentives.** The following types of incentives may be granted to registered business enterprises (RBE) that will qualify for registration under the Act:

  1. **Income Tax Holiday (ITH)** of four to seven years, depending on the category based on location and industry priorities, and other factors, as specified in the Act which may be availed of by both Export Enterprises and Domestic Market Enterprises under the Strategic Investment Priority Plan (SIPP).

  2. Followed by **Special Corporate Income Tax (SCIT)** of 5% of gross income earned (GIE), in lieu of all national and local taxes, or **Enhanced Deductions**. Provided, that in no case shall the enhanced deductions be granted simultaneously with the SCIT.

     At the option of the export enterprise, Enhanced Deductions shall be granted. Domestic market enterprises may only be granted Enhanced Deductions after ITH.

     - For RBEs entitled to avail of the **Enhanced Deductions**, the following may be allowed as additional deductions:

Type of Expense	Additional Deduction
1. Depreciation Allowance of assets acquired for the RBE's production of goods and services (qualified capital expenditure) *(shall be allowed for assets that are directly related to the registered enterprise's production of goods and services other than administrative and other support services)*	Additional 10% for buildings Additional 20% for machineries and equipment
2. Labor Expense incurred* *(shall not include salaries, wages, benefits, and other personnel costs incurred for managerial, administrative, indirect labor and support services)*	Additional 50%
3. Research and Development* *(directly related to registered project or activity; limited to local expenditures incurred for salaries of Filipino employees and consumables and payments to local research and development organizations)*	Additional 100%
4. Training Expense* *(training as approved by the IPA; given to the Filipino employees engaged directly in the RBE's production of goods and services)*	Additional 100%
5. Domestic Input Expense* *(shall only apply to domestic input expense that are directly related to and actually used in the registered export project or activity of the RBE)*	Additional 50%
6. Power Expense* *(shall only apply to power utilized for the registered project or activity)*	Additional 50%
7. Reinvestment Allowance to Manufacturing Industry *(shall be determined in the SIPP)*	Maximum 50% of the reinvested undistributed profit or surplus *(within a period of 5 years from the time of such reinvestment)*
8. Enhanced Net Operating Loss Carry Over (NOLCO)	Incurred during the first 3 years from the start of commercial operations; may be carried over as deduction from gross income within the next 5 consecutive taxable years immediately following the year of such loss.

** incurred in the taxable year*

3. **Duty exemption** on Importation of Capital Equipment, Raw Materials, Spare Parts, or Accessories

    - Provided directly and exclusively used in the registered project or activity by RBE and are not produced or manufactured domestically in sufficient quantity or of comparable quality and at reasonable prices.

    - For part-time utilization in a non-registered project or activity, to maximize the usage, prior approval from the IPA may be secured, and proportionate taxes and duties are paid.

    - For importation to be used for a non-registered project or activity, at any time within five years from date of importation, RBE shall seek prior approval of the IPA and pay the taxes and custom duties that were not paid upon the importation.

    - For sale, transfer, or disposition of capital equipment, raw materials, spare parts and accessories which were granted tax and custom duty exemption, **within the first 5 years from date of importation**, approval of IPA must be secured and allowed only under the following circumstances:

        a. Made to another enterprise availing of customs duty exemption;

        b. Made to another enterprise not availing of duty exemption, upon payment of any taxes and duties due on the *Net Book Value* of the capital equipment, raw materials, spare parts and accessories;

        c. Exportation or required for pollution abatement and control;

        d. Proven technical obsolescence; or

        e. Donated to TESDA, state universities and colleges (SUCs), or DepEd and CHED-accredited schools. The donation shall be exempt from import duties and taxes, including donor's tax.

    If the sale, transfer, or disposition is made without prior approval, the RBE and the vendee, transferee or assignee shall be solidarily liable to pay twice the amount of the duty exemption that should have been paid.

    - For sale, transfer or disposition made **after five years from date of importation**, prior notice is given to IPA. Even if with notice, RBE is still liable to pay duties based on the Net Book Value if it has violated any of its registration terms and conditions.

4. **VAT exemption on importation and VAT zero-rating on local purchase**s of goods and services directly and exclusively used in the registered project or activities by RBE.

- **Other Provisions under Conditions for Availment.**

    1. The importation of COVID-19 vaccines shall be exempt from import duties, taxes, and other fees subject to approval or licenses issued by the Department of Health (DOH) or the Foods and Drug Administration (FDA).

    2. Persons who directly import petroleum products, as defined under RA No. 8479, for resale in the Philippine customs territory and/or in free zones, as defined under the Customs Modernization and Tariff Act or RA No. 10863, shall not be entitled to the tax and duty incentives in this section of the Act, and shall be subject to appropriate taxes.

Importers can file for claims for the refund of duties and taxes applicable under the Customs Modernization and Tariff Act or RA No. 10863, as applicable, for export and/or other tax-exempt sales.

3. Crude oil that is intended to be refined at a local refinery, including the volumes that are lost and not converted to petroleum products when the crude oil actually undergoes the refining process, shall be exempt from the payment of applicable duties and taxes upon importation. Applicable duties and taxes on petroleum products shall be payable only upon lifting of the petroleum products produced from the imported crude oil subject to rules and regulations.

4. RBEs whose performance commitments include job generation shall maintain their employment levels to the extent practicable. In case of reduced employment or when the performance commitment for the job generation is not met, RBE must submit to the respective IPA and FIRB their justification.

- **Period of Availment**. For purposes of granting the period of availment of incentives, the determination of the category shall be based on both **location** and **industry** of the registered project or activity, and other relevant factors as may be defined in the SIPP.

  The period of availment of the **ITH which shall be followed by the SCIT rate or Enhanced Deductions** by the RBE shall be as follows:

Category	ITH Duration	SCIT OR Enhanced Deduction Duration
Export enterprise	4 to 7 years*	10 years *SCIT or Enhanced deductions*
Domestic market enterprise	4 to 7 years*	5 years *Enhanced deductions*

**Depending on location and industry priorities*

Location

The location shall be prioritized according to the level of development as follows:

1. National Capital Region (NCR);

2. Metropolitan areas or areas contiguous and adjacent to the NCR; and

3. All other areas.

Metropolitan areas refer to Metro Cebu and Metro Davao or those LGUs which are later qualified or grouped as such by NEDA or through laws or executive issuances.

Industry

The industry of the registered project or activity shall be prioritized according to the national industrial strategy specified in the SIPP. The SIPP shall define the coverage of the tiers and provide the conditions for qualifying the activities.

Tier I shall include activities that

1. Have a high potential for job creation;

2. Take place in sectors with market failures resulting in underprovision of basic goods and services;

3. Generate value creation through innovation, upgrading or moving the value chain;

4. Provide essential support for sectors that are critical to industrial development; or

5. Are emerging owing to potential comparative advantage.

Tier II shall include activities that produce supplies, parts and components and intermediate services that are not locally produced but are critical to industrial development and import-substituting activities, including crude oil refining.

Tier III activities shall include:

1. Research and development resulting in demonstrably significant value-added, higher productivity, improved efficiency, breakthroughs in science and health, and high paying jobs;

2. Generation of new knowledge and intellectual property registered or licensed in the Philippines;

3. Commercialization of patents, industrial designs, copyrights and utility models owned or co-owned by RBE;

4. Highly technical manufacturing; or

5. Are critical to the structural transformation of the economy and require substantial catch-up efforts.

The industry and locational prioritization shall be subject to review and revision *every 3 years* in accordance with the SIPP subject to standards in Section 300 (on SIPP) or in exceptional circumstances to attract substantial investment to respond to a situation or crisis or to target specific industries.

Period of Availment of Incentives

The period of incentives based on the combination of both location and industry priorities as determined in the SIPP shall be as follows:

- **For exporters:**

Location/Industry Tiers	Tier I	Tier II	Tier III
NCR	4 ITH + 10 ED/SCIT	5 ITH + 10 ED/SCIT	6 ITH + 10 ED/SCIT
Metropolitan areas or areas contiguous and adjacent to the NCR	5 ITH + 10 ED/SCIT	6 ITH + 10 ED/SCIT	7 ITH + 10 ED/SCIT
All other areas	6 ITH + 10 ED/SCIT	7 ITH + 10 ED/SCIT	7 ITH + 10 ED/SCIT

- **For Domestic Market Activities:**

Location/Industry Tiers	Tier I	Tier II	Tier III
NCR	4 ITH + 5 ED	5 ITH + 5 ED	6 ITH + 5 ED
Metropolitan areas or areas contiguous and adjacent to the NCR	5 ITH + 5 ED	6 ITH + 5 ED	7 ITH + 5 ED
All other areas	6 ITH + 5 ED	7 ITH + 5 ED	7 ITH + 5 ED

A qualified expansion or entirely new project or activity registered under the Act may qualify to avail of incentives, subject to qualifications set in the SIPP and performance review of the FIRB.

Existing registered projects or activities prior to the effectivity of the Act may qualify to register and avail of the incentives granted under the Act for the prescribed period subject to the criteria and conditions set forth in the SIPP.

The period of availment of incentives shall commence from the actual start of commercial operations with the RBE availing of the tax incentives within 3 years from the date of registration, unless otherwise provided in the SIPP and its corresponding guidelines.

Additional Period of Incentives

In addition to the incentives provided in the Tiers, projects or activities or RBEs located in *areas recovering from armed conflict or a major disaster*, as determined by the Office of the President, shall be entitled to *two additional years of ITH*.

Projects or activities registered prior to the effectivity of the Act, or under the incentive system provided in the Act that shall, in the duration of their incentives, completely *relocate from the NCR*, shall be entitled to *three additional years of ITH*, provided, that the additional incentive shall commence at the completion of the relocation of operations.

- **Investments Prior to the Effectivity of the Act**. RBEs with incentives granted prior to the effectivity of the Act shall be subject to the following rules:

Current Incentives	Transitory Period
A. Granted only an ITH	Allowed to continue to avail of the ITH for the remaining period. For those that have not yet availed of the ITH, period specified in the terms and conditions of their registration.
B. Granted ITH and entitled to 5% tax on GIE (5% GIT) after the ITH	Allowed to avail of 5% GIT based on Subsection (C) (*i.e., for 10 years*).
C. Currently availing of the 5% GIT	Continue to avail the of 5% GIT for 10 years.

After the expiration of the transitory period under item C above, **export enterprises** registered prior to the effectivity of the Act shall have the option to reapply and avail of the incentives granted under Section 294 (B) (i.e., SCIT) for the same period, subject to conditions or qualifications set forth in the SIPP and performance review of the FIRB.

- **Power of the President to Grant Incentives**. The President may, in the interest of national economic development, and upon the recommendation of the FIRB, may:

  1. Modify the mix, period or manner of availment of incentives; or

  2. Craft the appropriate financial support package for a highly desirable project or a specific industrial activity.

  Financial support includes utilization of government resources such as land use, water appropriation, power provision, and budgetary support provision under the annual general appropriations act.

  The grant of ITH shall not exceed 8 years and thereafter, 5% SCIT may be granted provided that the total period of incentive availment shall not exceed 40 years.

  The exercise by the President of the power under this Section shall be based on a positive recommendation from the FIRB upon its determination that the following conditions are satisfied:

  1. The project has a comprehensive sustainable development plan with clear inclusive business approaches high level of sophistication and innovation; and

  2. Minimum investment capital of P50 Billion or its equivalent in US dollars OR a minimum direct local employment generation of at least 10,000 within 3 years from the issuance of the Certificate of Entitlement. The threshold shall be subject to a periodic review by the FIRB every 3 years.

  If the project fails to substantially meet the projected impact on the economy and agreed performance target, the FIRB shall recommend to the President the cancellation of the tax incentive or financial support package or the modified period or manner of availment of incentives, after due hearing and an adequate opportunity to substantially comply with the agreed performance targets and outputs.

- **Qualifications for Tax Incentives**. In the review and grant of incentives, the RBE must:

  1. Be engaged in a project or activity included in the SIPP;

  2. Meet the target performance metrics after the agreed time period;

  3. Install an adequate accounting system that shall identify the investments, revenues, costs and profits or losses of each registered project or activity undertaken by the enterprise separately from the aggregate investments, revenues, costs and profits or losses of the whole enterprise; or establish a separate corporation for each registered project or activity if the IPA should so require;

  4. Comply with the e-receipting and e-sales requirement in accordance with Sections 237 and 237(A) of this Act; and

  5. Submit annually reports of beneficial ownership of the organization and related parties.

- **Implementing Rules and Regulations**. Within 90 days from the effectivity of this Act, the Secretary of Finance, upon the recommendation of the Commissioner of Internal Revenue, shall promulgate the necessary rules and regulations for its effective implementation.

  For the provisions under Title XIII, the Secretary of Finance and the Secretary of Trade and Industry shall jointly promulgate the necessary rules and regulations thereof within the same period, after due consultations with the Commissioner of Internal Revenue, the Board of Investments, and other IPAs, for its effective implementation.

  Failure to promulgate the rules and regulations shall not prevent the implementation of this Act upon its effectivity.

- **Effectivity**. This Act shall take effect 15 days after its complete publication in the Offical Gazette or in a newspaper of general circulation.

This has been published in Business Mirror on March 27, 2021.

VETOED PROVISIONS

Pursuant to the Constitutional power of the President to veto any particular item or items in CREATE, the following line items have been vetoed by the President:

1. Increasing the VAT-exemption threshold of sale of residential lot to P2,500,000 and house and lot and other residential dwellings to P4,200,000.

2. Credit or refund of taxes erroneously or illegally received or penalties imposed without authority within 90 days from the date of complete submission of documents in support of the application.

3. Definition of Investment Capital.

4. Redundant incentives for Domestic Market Enterprises (DMEs) (e.g., grant of SCIT incentives). Further classifications of DMEs (e.g., those that are engaged in activities that are classified as "critical", and those with minimum investment capital of P500 million).

5. Allowing existing registered activities to apply for further extensions of new incentives for the same activity.

6. Limitations on the powers of the FIRB.

7. Specific industries mentioned under Tiers I and III.

8. Provision granting the President the power to exempt an IPA from the reform provisions of the Act.

9. Automatic approval of applications for incentives if not acted upon within twenty days from the date of submission of the application and complete relevant supporting documents to the FIRB/IPA.

SGV | Building a better working world

SGV is the largest professional services firm in the Philippines. In everything we do, we nurture leaders and enable businesses for a better Philippines. This Purpose is our aspirational reason for being that ignites positive change and inclusive growth.

Our insights and quality services help empower businesses and the economy, while simultaneously nurturing our people and strengthening our communities. Working across assurance, tax, strategy and transactions, and consulting services, SGV teams ask better questions to find new answers for the complex issues facing our world today.

SGV & Co. is a member firm of Ernst & Young Global Limited. EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients.

EY exists to build a better working world, helping to create long-term value for clients, people and society and build trust in the capital markets. Enabled by data and technology, diverse EY teams in over 150 countries provide trust through assurance and help clients grow, transform and operate.

Information about how EY collects and uses personal data and a description of the rights individuals have under data protection legislation are available via ey.com/privacy. For more information about our organization, please visit ey.com/ph.

APAC No. 10000731
Expiry date: no expiry

SGV & Co. maintains offices in Makati, Clark, Cebu, Davao, Bacolod, Cagayan de Oro, Baguio, General Santos and Cavite.

For an electronic copy of the Tax Bulletin or for further information about Tax Services, please visit our website www.ey.com/ph

We welcome your comments, ideas and questions. Please contact Allenierey Allan V. Exclamador via e-mail at allenierey.v.exclamador@ph.ey.com or at telephone number (632) 8894-8398.

The deadlines and timelines mentioned in this Tax Bulletin are pursuant to our understanding of the existing administrative issuances of the BIR as of the date of writing. These may be subject to change in light of the recently passed Bayanihan 2, which also authorizes the President to move statutory deadlines and timelines for the submission and payment of taxes, fees, and other charges required by law, among others.