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Corporate Recovery and Tax Incentives for Enterprises Act (CREATE)

AS PART OF THE COMPREHENSIVE TAX REFORM PROGRAM OF THE GOVERNMENT, CREATE SERVES AS A FOLLOW-UP TO PACKAGE 1 OF THE TAX REFORM FOR ACCELERATION AND INCLUSION ACT (TRAIN). With the objective of attracting investments for the development of the national economy, the primary amendment of CREATE is the reduction of the regular corporate income tax rate for both domestic and foreign corporations from 30% to 25%. CREATE also incorporates in the National Internal Revenue Code of 1997 (1997 NIRC) the fiscal incentives such as income tax holiday, special corporate income tax rate of 5%, enhanced deductions, and duty and value-added tax (VAT) exemptions that may be granted to registered business enterprises. Moreover, proprietary educational institutions and non-profit hospitals are subject to a lower income tax rate of 1% until June 30, 2023. Other amendments include the repeal of the 10% improperly accumulated earnings tax and the reduction of the minimum corporate income tax rate from 2% to 1% until June 30, 2023. The government hopes that these reforms would make the Philippines cost competitive in doing business to encourage investments that would lead to enhancements in productivity and increased employment.

CONSISTENT WITH THE OBJECTIVE OF ENCOURAGING BUSINESSES, CREATE ALSO INTRODUCED TAX ADMINISTRATION POLICIES THAT WOULD ENSURE BETTER TAXPAYER EXPERIENCE. CREATE requires the Department of Finance (DOF) to review the rules and regulations on the withholding of creditable tax and to direct the Bureau of Internal Revenue (BIR) to amend the rules and regulations that adversely and materially impact the taxpayer. CREATE also removes the requirement of procuring prior certifications or rulings from the BIR for tax-free exchanges.

CREATE ALSO CONTAINS PROVISIONS ADDRESSING THE COVID-19 PANDEMIC SUCH AS VAT-EXEMPTION OF THE SALE AND IMPORTATION OF VACCINES, AND EQUIPMENT AND MATERIALS FOR THE MANUFACTURE OF PERSONAL PROTECTIVE EQUIPMENT. CREATE, previously Corporate Income Tax and Incentives Rationalization Act (CITIRA), not only seeks to improve the economy in the long term but also aims to help businesses recover from the negative effects of the pandemic and other calamities.

The changes introduced by CREATE to the 1997 NIRC are as follows:

TAX MATTER	1997 NIRC	CREATE
Administrative Matters		
Submission of report and pertinent information by the CIR.	**Sec. 20** The duties of the CIR include submitting the following: (A) pertinent information upon request of Congress and in aid of legislation; (B) a report on the exercise of his powers to the Oversight Committee through the Chairmen of the Committee on Ways and Means of the Senate.	In addition, the CIR shall also be required to submit to the Secretary of Finance, upon the latter's order, pertinent information on the entities receiving incentives under the 1997 NIRC subject to the provisions of Section 270 on the unlawful divulgence of trade secrets unless the taxpayer consents in writing to the disclosure.
Functions of the Congressional Oversight Committee.		**Sec. 290 (5)** The Congressional Oversight Committee shall have the additional function of reviewing the performance of the Fiscal Incentives Review Board in aid of legislation.
Review of regulations and processes for the withholding of creditable tax at source.		**Sec. 57** For better tax administration, the DOF shall be required: 1. to review the regulations and processes for the withholding of creditable tax every three years; and 2. to direct the BIR to amend the rules and regulations that adversely and materially impact the taxpayer.
Definition of Terms		
Definition of "corporation".		**Sec. 22(B)** The term "corporation" now includes one-person corporations.
Income Tax of Individuals		
Final tax on Philippine Charity Sweepstakes Office (PCSO) and lotto winnings	**Sec. 25(A)(2)** Under TRAIN, PCSO and lotto winnings of citizens and resident aliens exceeding P10,000.00 are subject to 20% final tax, but PCSO	PCSO and Lotto winnings of nonresident aliens engaged in trade or business within the Philippines

of nonresident aliens.	and lotto winnings of nonresident aliens engaged in trade or business within the Philippines remain tax exempt regardless of amount.	exceeding P10,000.00 are now subject to 20% final tax.
Income Tax Rates of Domestic Corporations		
Income tax rate of domestic corporations.	**Sec. 27(A)** Domestic corporations are subject to 30% income tax rate on their taxable income.	The income tax rate on domestic corporations shall be 25% effective July 1, 2020. A further reduced income tax rate of 20% shall apply to domestic corporations with: a. net taxable income not exceeding P5 million, AND b. total assets, excluding land on which the business entity's office, plant, and equipment are situated, not exceeding P100 million. The optional 15% gross income tax has been repealed.
Corporate income tax of proprietary educational institutions and non-profit hospitals.	**Sec. 27(B)** Proprietary educational institutions and non-profit hospitals are taxed at 10% of their taxable income. The term "proprietary educational institution" is defined as any private school maintained and administered by private individuals or groups with an issued permit to operate from the agencies stated.	The income tax rate beginning July 1, 2020 until June 30, 2023 is 1%. The definition of ''proprietary educational institution" is replaced by the more general term "proprietary" to extend the scope of the definition to private hospitals.
Corporate income tax of government-owned or -controlled corporations (GOCCs), agencies or instrumentalities.	**Sec. 27(C)** All corporations, agencies or instrumentalities owned or controlled by the Government are subject to corporate income tax imposed under this section except the following: 1. Government Service Insurance System; 2. Social Security System; 3. Philippine Health Insurance Corporation; and	The amendment codifies Revenue Memorandum Circular No. 43-2011 holding that the income of the Home Development Mutual Fund is not taxable.

	4. Local water districts.	
Tax on intercorporate dividends.	**Sec. 27(D)(4)** Only dividends received by a domestic corporation from another domestic corporation are exempt from tax.	Foreign-sourced dividends may be exempt under the following conditions: 1. The funds from such dividends received or remitted into the Philippines are reinvested in the business operations of the domestic corporation in the Philippines within the next taxable year from the time the foreign-sourced dividends are received. 2. The dividends shall be limited to funding the working capital requirements, capital expenditures, dividend payments, investment in domestic subsidiaries, and infrastructure project. 3. 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.
Minimum Corporate Income Tax (MCIT) of domestic corporations and resident foreign corporations.	**Secs. 27(E); 28(2)** MCIT of 2% is imposed on the gross income beginning on the 4th taxable year since the start of operations when such MCIT is greater than the regular corporate income tax.	Effective July 1, 2020 until June 30, 2023, the MCIT rate shall be 1%.
Income Tax Rate of Foreign Corporations		
Income tax rate of foreign corporations.	**Sec. 28(A)(1) and (B)** A resident foreign corporation is subject to 30% income tax on taxable income from all sources within the Philippines, while a nonresident foreign corporation is subject to a final tax of 30% on	The income tax rate on resident foreign corporation has been reduced to 25% of taxable income effective July 1, 2020. The final tax on nonresident foreign corporations has been reduced as

	gross income from all sources within the Philippines.	well to 25% of Philippine source gross effective January 1, 2021. The optional 15% gross income tax on resident foreign corporations has also been repealed.
Preferential tax rates/exemption of offshore banking units (OBU).	**Sec. 28(A)(4)** Offshore income of OBUs authorized by the *Bangko Sentral ng Pilipinas* (BSP) from foreign currency transactions with nonresidents, other OBUs, local commercial banks and branches of foreign banks authorized by the BSP to transact business with OBUs is exempt from income tax. Onshore income derived by OBUs from foreign currency loans granted to residents other than OBUs or local commercial banks, including branches of foreign banks authorized by the BSP to transact business with OBUs shall be subject to 10% final tax.	The provisions on offshore banking units have been repealed. Thus, OBUs are now subject to the 25% ordinary corporate income tax applicable to resident foreign corporations with respect to taxable income from sources within the Philippines.
Income tax of regional operating headquarters (ROHQ).	**Sec. 28(A)(6)(b)** ROHQs are subject to the preferential income tax rate of 10% on their taxable income from qualifying services.	**Sec. 28(A)(5)(b)** Effective January 1, 2022, ROHQs shall be subject to the regular corporate income tax of 25% on their taxable income.
Income tax on certain passive income of resident foreign corporations.	**Sec. 28(A)(7)(a)** Interest income derived by a resident foreign corporation under the expanded foreign currency deposit system shall be subject to 7.5% final tax. **Sec. 28(A)(7)(c)** Capital gains derived by resident foreign corporations from the sale or exchange of shares of stock in a domestic corporation not traded in the stock exchange are subject to the 5%/10% capital gains tax.	**Sec. 28(A)(6)(a)** The rate of final tax on the interest income derived by resident foreign corporation under the expanded foreign currency deposit system has been increased to 15%. **Sec. 28(A)(6)(c)** The capital gains tax on the sale or exchange of shares in a domestic corporation not listed and traded in the stock exchange has been increased to 15%.

Income tax on certain income received by nonresident foreign corporations.	**Sec. 28(B)(5)(c)** Capital gains derived by nonresident foreign corporations from the sale or exchange of shares of stock in a domestic corporation not traded in the stock exchange are subject to the 5%/10% capital gains tax.	**Sec. 28(B)(5)(b)** The capital gains tax on the sale or exchange of shares in a domestic corporation not listed and traded in the stock exchange has been increased to 15%.
Deductions from Gross Income		
Additional deduction for expenses incurred for labor training.		**Sec. 34(A)(1)(v)** One-half 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 and duly covered by an apprenticeship agreement under the Labor Code of the Philippines may be claimed as additional deduction from taxable income subject to the following conditions: 1. for enterprise-based training of students from public educational institutions, the enterprise shall secure proper certification from the DEPED, TESDA, or CHED; and 2. the deduction shall not exceed 10% of direct labor wage.
Deductions for interest expense	**Sec. 34(B)(1)** The deduction for interest expense is reduced by 42% of the interest income subjected to final tax.	The deduction for interest expense shall be reduced by 20% of the interest income subjected to final tax. If the interest income tax is adjusted in the future, the interest expense reduction rate shall be based on the prescribed standard formula defined in the rules and regulations to be promulgated by the Secretary of Finance, upon the recommendation of the CIR.

Tax-Free Exchanges		
Recognition of realized gains or losses from sales or exchanges.	**Sec. 40(C)(2)** No gain or loss is recognized in non-recognition transactions, which includes (i) transfer of property to a controlled corporation; (ii) statutory merger or consolidation; and (iii) *de facto* merger. Under Revenue Regulations No. 18-2001, an application for certification or ruling that the transaction is indeed a tax-free exchange must be submitted to the BIR which shall issue a Certificate Authorizing Registration or Tax Clearance for the transfer or registration of properties.	The list of non-recognition transactions has been expanded to include: 1. a recapitalization; and 2. a reincorporation Aside from non-recognition of realized gains or losses, sales or exchanges of properties used for business covered by the non-recognition provisions shall also be exempt from VAT. CREATE further provides that "prior [BIR] certification or tax ruling shall not be required for purposes of availing of the tax exemption."
VAT-Exempt Transactions		
Sale, importation, printing, or publication of books.		**Sec. 109(R)** Educational reading materials covered by the UNESCO agreement on the importation of educational, scientific, and cultural materials including digital or electronic format shall be VAT-exempt.
Sale, importation of prescription drugs and medicines.	**Sec. 109(AA)**Only drugs medicines for diabetes, high-cholesterol and hypertension are VAT-exempt.	Drugs and medicines for cancer, mental illness, tuberculosis, and kidney diseases shall also be VAT-exempt beginning January 1, 2021.
COVID-19 related items.		**Sec. 109(BB)** The sale or importation of the following shall also be VAT-exempt: 1. capital equipment, its spare parts, and raw materials, necessary to produce personal protective equipment components; 2. all drugs, vaccines and medical devices specifically prescribed

		and directly used for the treatment of COVID-19; 3. drugs, including raw materials, for the treatment of COVID-19 approved by the FDA for use in clinical trials. The Department of Health shall issue a list of prescription drugs and medical devices to be covered within 60 days from the effectivity of the Act and every three months thereafter. The exemption shall be subject to post audit by the BIR, or the Bureau of Customs, as may be applicable.
Percentage Tax		
Percentage tax rates.	**Sec. 116** Persons who are exempt from VAT for having gross annual sales not exceeding Php3,000,000 shall pay percentage tax of 3% on their gross quarterly sales or receipts.	Effective July 1, 2020 until June 30, 2023, the percentage tax rate has been reduced to 1%.

TO APPLY THE NEW CORPORATE TAX RATE, SEC. 27 OF THE 1997 NIRC STATES THAT THE INCOME AND EXPENSES SHALL BE DEEMED TO HAVE BEEN EARNED AND SPENT EQUALLY FOR EACH MONTH OF THE PERIOD. THE CORPORATE INCOME TAX RATE SHALL BE APPLIED ON THE AMOUNT COMPUTED BY MULTIPLYING THE NUMBER OF MONTHS COVERED BY THE NEW RATE WITHIN THE FISCAL YEAR BY THE TAXABLE INCOME FOR THE PERIOD DIVIDED BY TWELVE. For illustration purposes, for a company with fiscal year that ends on March 31 and with P1,000,000 taxable income, the computation of the corporate income tax shall be (1,000,000 x 3 / 12 x 30%) + (1,000,000 x 9 / 12 x 25%) whereby the taxable income shall be pro-rated over the months in which the applicable tax rates apply - 30% for months prior to July 1, 2020 and the reduced rate of 25% for the months thereafter.

CREATE ADDS TO THE 1997 NIRC A NEW TITLE XIII ON TAX INCENTIVES, WHICH CONSOLIDATES THE REQUIREMENTS TO QUALIFY FOR TAX INCENTIVES THAT MAY BE GRANTED BY THE FISCAL INCENTIVES REVIEW BOARD (FIRB) OR BY EXISTING INVESTMENT PROMOTION AGENCIES (IPA). The highlights of Title XIII are as follows:

A. TAX INCENTIVES

1. To qualify for the grant of the tax incentives under Title XIII, the registered business enterprise must:

a. be engaged in a project or activity included in the Strategic Investment Priority Plan (SIPP);
b. meet the target performance metrics after the agreed time period;
c. 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 investment promotion agency should so require;
d. comply with the e-receipting and e-sales requirement in accordance with Sections 237 and 237(a) of the 1997 NIRC; and
e. submit annual reports of beneficial ownership of the organization and related parties. **(Sec. 304)**

2. Under Presidential Decree No. 776, the FIRB was created to recommend to the President the withdrawal, modification, revocation, or suspension of the grant of the incentives. Under CREATE, upon recommendation of the IPAs, the FIRB may directly approve, reject, or withdraw the grant of the following tax incentives:
   a. income tax holiday
   b. effective July 1, 2020, special corporate income tax rate of 5% based on gross income earned, in lieu of all national and local taxes, for export enterprises
   c. enhanced deductions for export enterprises and domestic market enterprises as follows:
      i. depreciation allowance for qualified capital expenditures – 10% additional deduction for buildings and 20% additional for machinery and equipment that are directly related to the registered enterprise's production of goods and services other than administrative and other support services;
      ii. 50% additional deduction on labor expense, excluding salaries, wages, benefits, and other personnel costs incurred for managerial, administrative, indirect labor and support services;
      iii. 100% additional deduction on research and development expense directly related to the registered project or activity of the entity and limited to local expenditure incurred for salaries of Filipino employees and consumables and payments to local research and development organizations;
      iv. 100% additional deduction on expense for training approved by the IPAs based on the SIPP and given to Filipino employees engaged directly in the registered business enterprise's productions of goods and services;
      v. 50% additional deduction on domestic input expense directly related and actually used in the registered export projects or activity of the registered business enterprise;
      vi. 50% additional deduction on the expense for power utilized for the registered project or activity;

vii. reinvestment allowance for manufacturing registered business enterprise amounting to a maximum of 50% of the amount reinvested in any of the projects and activities in the SIPP;

viii. enhanced Net Operating Loss Carry-Over – operating losses incurred during the first three years of commercial operations may be claimed as a deduction for the next five years following the year of loss;

d. duty exemption on importation approved by the IPA of capital equipment, raw materials, spare parts, or accessories directly and exclusively used in the registered project or activity;

   The proportionate taxes and duties must be paid if the items are utilized for non-registered projects or activities within the first five years from the date of importation, with prior approval of the concerned IPA.

   The approval of the IPA must also be obtained before the sale, transfer or disposal of the capital equipment, raw materials, spare parts, or accessories under certain circumstances enumerated in Sec. 295(C)(2). The registered business enterprise and the transferee shall be solidarily liable to pay twice the amount of the duty exemption if the transfer is without prior approval.

e. VAT exemption on importation and VAT zero-rating of local purchases of goods and services directly and exclusively used in the registered project or activity.

   (Sec. 294, 297)

3. The periods for availment of the incentives shall be as follows:

Registered Business Enterprise	**Income Tax Holiday**	**Other Incentives**
Export enterprise	4 to 7 years depending on location and industry priorities	5% special corporate income tax or enhanced deductions for 10 years following the availment of the income tax holiday
Domestic market enterprise under the SIPP	4 to 7 years depending on location and industry priorities	enhanced deductions for 5 years following the availment of the income tax holiday

The periods shall be counted from the actual start of commercial operations within three years from the date of registration unless otherwise provided in the SIPP and its corresponding guidelines.

The allowable period shall depend on the location and industry. Locations are divided into the National Capital Region (NCR), Metropolitan Areas or areas contiguous to the NCR and all other areas. Industries are divided into three tiers as follows:

a. Tier I – activities that (i) have high potential for job creation; (ii) take place in sectors with market failures resulting in low supply of basic goods and services; (iii) generate value creation through innovation, upgrading or moving up the value chain; (iv) provide essential support for sectors that are critical to industrial development; or (v) are emerging owing to potential comparative advantage;

b. Tier II – 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; and

c. Tier III – activities shall include (i) research and development resulting in demonstrably significant value-added, higher productivity, improved efficiency, breakthroughs in science and health, and high paying jobs; (ii) generation of new knowledge and intellectual property registered or licensed in the Philippines; (iii) commercialization of patents, industrial designs, copyrights and utility models owned or co-owned by a registered business enterprise; (iv) highly technical manufacturing, or (v) are critical to the structural transformation of the economy and require substantial catch-up efforts. **(Sec. 296)**

4. CREATE provides special rules for the grant of tax incentives to specific industries and activities:
   a. The importation of COVID-19 vaccines shall be exempt from import duties, taxes, and other fees subject to the approval or issuance of licenses by the Department of Health or the Food and Drug Administration. **(Sec. 295(E))**
   b. Importers of petroleum products defined under Republic Act No. (R.A.) 8479 (the Downstream Oil Deregulation Act of 1998) for resale in Philippine Customs Territory and/or in free zones defined under R.A. 10863 (the Customs Modernization and Tariff Act) shall not be entitled to the foregoing tax and duty incentives but will be subject to the taxes imposed under the 1997 NIRC. Importers who subsequently export fuel, subject to the appropriate rules of the fuel marking program, may apply for a refund of duties and taxes, as applicable, under R.A. 10863. Meanwhile, 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 undergoes the refining process, shall be exempt from payment of applicable duties and taxes upon importation. The duties and taxes shall be payable only when the petroleum products produced from the imported crude oil are lifted, subject to the rules and regulations of the Bureau of Customs and the BIR. (**Sec. 295(F), (G))**

B. REPORTORIAL REQUIREMENTS

1. In addition to filing tax returns and paying tax liabilities on or before the deadlines provided under the 1997 NIRC, registered business enterprises who are availing tax incentives must also submit to the respective IPAs a complete annual tax incentives report. Registered business enterprises must use the electronic system for filing and payment of taxes with the BIR, otherwise, they shall file with their respective Revenue District Offices. (**Sec. 305)**
2. The following penalties shall be imposed for failure to comply with the reportorial requirements:
   a. First violation – fine of P100,000.00
   b. Second violation – fine of P500,000.00

c. Third violation – cancellation of registration. **(Sec. 308)**

C. TRANSITORY PROVISIONS

Registered business enterprises with incentives granted prior to the effectivity of the law may avail the tax incentives under CREATE subject to the following rules:

1. The income tax holiday may be availed for the remaining periods specified in the terms and conditions of their registration.
2. If aside from the income tax holiday, the registered business enterprise is also entitled to the 5% tax on gross income, the incentive may be availed for 10 years. (**Sec. 311)**

Note: The information provided herein is general and may not be applicable in all situations. It should not be acted upon without specific legal advice based on particular situations. If you have any questions, please feel free any of the following at the telephone number (632) 8633-9418, or at the indicated e-mail addresses:

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