

BDB Law

DU-BALADAD AND ASSOCIATES

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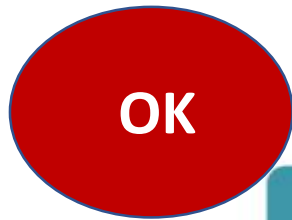
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Corporate Recovery and Tax Incentives for Enterprises (CREATE – Package 2)

Presentation For PCCI By:

Benedicta Du-Baladad
Founding Partner and CEO, BDB Law

The Comprehensive Tax Reform



Comprehensive Tax Reform Program



Package 1: TRAIN

Personal income tax and consumption tax



Package 1A:

Personal income tax, consumption tax, and transaction taxes TRAIN (RA 10963)

Package 1B:

Tax amnesty and motor vehicle user charge (MVUC)

Package 2:

Corporate income tax and fiscal incentives



Package 2+: Alcohol and tobacco excise tax, and mining tax



Lifted from DOF Presentation

EMPLOYEE/SELF-EMPLOYED

EMPLOYERS/CORPORATES

The Comprehensive Tax Reform

Comprehensive Tax Reform Program

Package 3



Property valuation
and taxes

Package 4



Capital income and
financial taxes

Lifted from DOF Presentation

CREATE (Bicam version)

(for approval into law by the President)

Changes on Income Tax

Definition of “Corporation”

BEFORE

Includes:



Partnerships

Joint-stock companies

Joint accounts

Associations

Insurance Companies

AMENDMENTS

Includes:



One person corporations

Partnerships

Joint-stock companies

Joint accounts

Associations

Insurance Companies

Tax Rates Imposed on Domestic and Resident Foreign Corporations

BEFORE

Single-Tiered Rate

30% income tax rate imposed

AMENDMENTS

TWO-Tiered Rate

EFFECTIVE JULY 1, 2020

25% GENERAL RULE

20% MSME RATE

For DOMESTIC CORPORATIONS ONLY

- Net taxable income not exceeding P5,000,000, **AND**
- Total assets not exceeding P100,000,000
 - Excludes land on which office, plant or equipment is situated during the YEAR

Preferential Tax Imposed on Proprietary Educational Institutions

BEFORE

10% Preferential income tax rate:

Only proprietary educational institutions defined

AMENDMENTS

10% Preferential income tax rate:

1%

From July 1, 2020 to
June 30, 2023

TEMPORARY COVID RELIEF MEASURE

Proprietary educational institutions and **hospitals** defined – a PRIVATE hospital or school with permit from DEPED, CHED or TESDA

Minimum Corporate Income Tax

BEFORE

2% MCIT rate

AMENDMENTS

MCIT rate:

2% General

1%

From July 1, 2020 to
June 30, 2023

TEMPORARY COVID RELIEF MEASURE

Tax Rates Imposed on Improperly Accumulated Earnings (IAET)

BEFORE

10% Income tax rate imposed

AMENDMENTS

IEAT repealed

Tax on Intercorporate Dividends

BEFORE



Intercorporate dividends between domestic corporations are exempt

AMENDMENTS



Intercorporate dividends between domestic corporations are exempt

Foreign sourced dividends exempt if:

- Actually remitted or received into the Phils and reinvested in PH operations of the corporation
- W/in next taxable year from receipt of dividend
- Limited to funding of working capital, capex, dividend payments, investments in domestic subsidiaries, and infra project;
- Recipient directly owns at least 20% of FC for a minimum of 2 years at the time of div. distribution

Tax Rates Imposed on Resident Foreign Corporations

BEFORE

Single-Tiered Rate

30% income tax rate imposed

AMENDMENTS

TWO-Tiered Rate

EFFECTIVE JULY 1, 2020

25% GENERAL RULE

NOT AVAILABLE FOR FOREIGN
CORPS.

20% MSME RATE

Capital Gains Tax from Unlisted Shares of Resident Foreign Corporations

BEFORE

5%-10% Tax on capital gains from shares not traded in stock exchange

AMENDMENTS

15% Tax on capital gains from shares not traded in stock exchange

Tax Rates Imposed on Non-Resident Foreign Corporations

BEFORE

30% Income tax rate imposed

5%-10% Tax on capital gains from shares not traded in stock exchange

AMENDMENTS

25%

**EFFECTIVE
Jan 1, 2021**

15% Tax on capital gains from shares not traded in stock exchange

Deductions to Gross Income

BEFORE

N/A No provision for deduction of labor training expenses

AMENDMENTS

Additional deduction of one-half (1/2) of the value of labor training expenses incurred for skills development of enterprise-based trainees enrolled in public senior high schools, public higher education, public technical and vocational institutions imitation:

Requirements:

1. Covered by apprenticeship agreement
2. Secure certification from DepEd, Tesda or Ched
3. Not to exceed ten percent (10%) of direct labor wage

Tax Free Exchange

Section 40(C)(2)

BEFORE

Non-recognition of gain or loss pursuant to a merger or consolidation by the following parties or such merger or consolidation:

- A corporation
- A shareholder
- A security holder of a corporation

AMENDMENTS

Non-recognition of gain or loss on a **corporation, or on its stock, or securities in a REORGANIZATION OR EXCHANGES OF PROPERTIES** by the following:

- A corporation who is a party to the merger or consolidation
- A corporation acquiring the stock of another corporation resulting in control
- A corporation acquiring all of the properties of another corporation
- Recapitalization
- Reincorporation

Tax Free Exchange

Section 40(C)(2)

BEFORE

No gain or loss shall also be recognized if property is transferred to a corporation by a person in exchange for stock or unit of participation in such a corporation of which as a result of such exchange said person, alone or together with others, not exceeding four (4) persons, gains control of said corporation: xxx

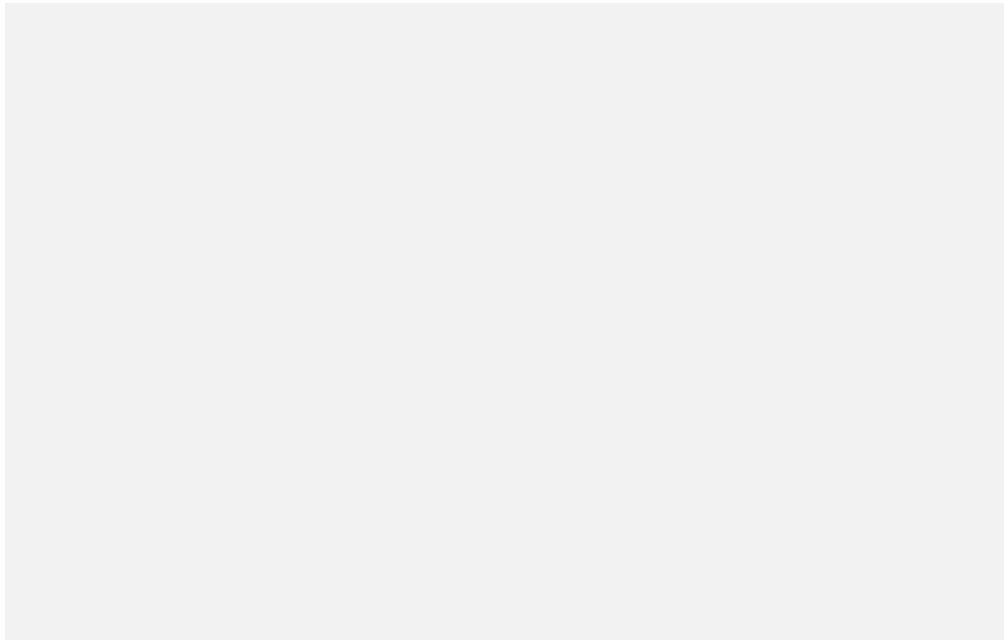
AMENDMENTS

No gain or loss shall also be recognized if property is transferred to a corporation by a person, **alone or together with others, not exceeding four (4) persons** in exchange for stock or unit 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: xxx

Tax Free Exchange

Section 40(C)(2)

BEFORE



AMENDMENTS

Non-imposition of VAT

Prior ruling for availment of tax exemption is not required

Power to Review and Amend Rules on CWT

BEFORE

N/A No provision for review and/or amendment of rules on creditable withholding tax

AMENDMENTS



Addition of power of DOF to review rules on creditable withholding tax at least once every three (3) years

Changes on VAT

VAT Exempt Transactions - Residential

Section 109(P)

BEFORE

AMENDMENTS

Sale of real properties not primarily held for sale or lease:

- Residential lot valued at P1,500,000 and below
- House and Lot, Other residential dwellings at P2,500,000 and below

Sale of real properties not primarily held for sale or lease:

- Residential lot valued at P2,500,000 and below
- House and Lot, Other residential dwellings at P4,200,000 and below

The said amounts shall be adjusted to present values beginning January 1, 2024 and every three (3) years thereafter

VAT Exempt Transactions - Books

Section 109(Q)

BEFORE

Sale, importation, printing, or publication of books, newspaper, magazine, review or bulletin

AMENDMENTS

Sale, importation, printing, or publication of books, newspaper, magazine, **journal**, review, bulletin or **any such educational material covered by the UNESCO agreement on the importation of educational, scientific, and cultural materials**

VAT Exempt Transactions – COVID 19 PPE's and Vaccine, Drugs

Section 109(BB)

BEFORE

N/A No similar provision

AMENDMENTS

FROM Jan 1, 2021 to
Dec 31, 2023

Sale or importation related to Covid-19:

- Capital equipment, spare parts, and raw materials for production of PPEs;
- Drugs, vaccines, and medical services;
- Drugs for treatment of C-19, clinical trials, including raw materials directly necessary for production of such drug

TEMPORARY COVID RELIEF MEASURE

VAT Exempt Transactions – COVID 19 Vaccine

Section 109(BB)

BEFORE

AMENDMENTS

N/A No similar provision

CoVID 19 Vaccine shall be EXEMPT from import duties, taxes and other fees, subject to approval of DOH or FDA

VAT Exempt Transactions – Prescription Drugs

Section 109(BB)

BEFORE

Sale of or importation of prescription drugs and medicines for CANCER, MENTAL ILLNESS, TUBERCULOSIS, AND KIDNEY DISEASES –

EXEMPT BEGINNING Jan 1, 2023

AMENDMENTS

EXEMPT BEGINNING JAN. 1, **2021**

Other Percentage Tax *Section 116*

BEFORE

3% Percentage tax rate

AMENDMENTS

Percentage tax rate:

3% ➔ General

1%

FROM JULY 1, 2020 to
JUNE 30, 2023

TEMPORARY COVID RELIEF MEASURE

Refund of Erroneously or Illegally Collected Taxes

Section 204(G)

BEFORE

AMENDMENTS

Period to process refund of erroneously or illegally collected taxes not provided

CIR not required to state legal and factual basis for denial

Appeal to CTA not provided

CIR required to process refund within 90 days from submission of complete documents

CIR required to state in writing the legal and factual basis for the denial

Appeal to the CTA within thirty (30) days from receipt of decision

Congressional Oversight Committee

Section 290

BEFORE

AMENDMENTS

The Committee shall:

- Monitor proper implementation of RA 8240 (Excise taxes on distilled spirits, wines, fermented liquor, cigars and cigarettes)
- Determine reasonable exercise of CIR's power to compromise and abate
- Review BIR collection performance
- Review BIR program implementation

The Committee shall:

- Monitor proper implementation of RA 8240 (Excise taxes on distilled spirits, wines, fermented liquor, cigars and cigarettes)
- Determine reasonable exercise of CIR's power to compromise and abate
- Review BIR collection performance
- Review BIR program implementation
- Review performance of FIRB

Title XIII



TAX INCENTIVES

Incentives

Section 294 and 295

SCOPE AND COVERAGE

- **All IPAs**
 - **Shall maintain function and powers under own Charter, unless repealed by CREATE**
 - **DOF, BIR, BOC shall retain respective mandates**

- **Authority to grant TAX incentives**
 - **FIRB**
 - **IPA, as delegated by FIRB**

TYPES OF TAX INCENTIVES

- A. Income Tax Holiday
- B. Special Corporate Income Tax (SCIT) - 5% Gross income earned **OR**
- C. Enhanced Deduction
- D. Duty Exemption on importation of capital equipment, RM, spare parts and Accessories
- E. VAT exemption on importation and VAT Zero-rating on local purchases – only for those directly and exclusively used for the registered activity.

Effective July 1, 2020

Who Can Avail ?

- **Export enterprise**
- **Domestic market enterprise (DME) with minimum capital investment of P500,000,000.00**
- **DME under SIPP engaged in "critical" activities (classified by NEDA to be crucial to national development)**
- **Any other registered enterprise under SIPP**

➤ Enhanced Deductions

DEDUCTIONS	ENHANCEMENT	CONDITION (Sec. 295)
Depreciation	<ul style="list-style-type: none">➤ Additional 10% for buildings➤ Additional 20% for machineries and equipment	Allowed for assets directly related to registered enterprises production
Labor expense	Additional 50%	Not include indirect salaries, wages, benefits and other personnel costs

➤ **Enhanced Deductions**

DEDUCTIONS	ENHANCEMENT	CONDITION (Sec. 295)
Research and development	Additional 100%	Apply only to those directly related to registered activity and limited to local expenditures/payments
Training expense	Additional 100%	Apply only to trainings as approved by IPAs

➤ **Enhanced Deductions**

DEDUCTIONS	ENHANCEMENT	CONDITION (Sec. 295)
Domestic input expense	Additional 50%	Apply only to domestic input that is directly related to and actually used in registered export activity
Power expense	Additional 50%	Apply only to power expense utilized for the registered activity

➤ **Enhanced Deductions**

DEDUCTIONS	ENHANCEMENT	CONDITION (Sec. 295)
Reinvestment Allowance to Manufacturing	Deduction to the extent of 50% (within a period of 5 years from reinvestment) of the amount reinvested coming from undistributed profit or surplus	Must be invested in any activities under SIPP
Enhanced Nolco	Loss for first 3 years of operation can be carried forward for 5 consecutive years following year of loss	Not previously offset from gross income

RULES FOR AVAILMENT

- **Sharing for the 5% SCIT**
 - **3% for the National Govt.**
 - **2% for local govt. to be remitted direct to LGU**

- **Conditions for Availment**
 - **ITH, followed by 5% SCIT OR Enhanced Deductions**
 - **SCIT and ED cannot be granted simultaneously**

- **Income from non-registered activity is subject to regular taxes**

Period of Availment

Section 296

Registered Enterprise	Tax Incentive	Period
Export Enterprise and domestic market enterprise engaged in “critical” activities	ITH	4 to 7 years depending on location or industry priorities
	SCIT OR Enhanced Deduction	10 years
Domestic market enterprise under SIPP not classified as critical	ITH	4 to 7 years
	SCIT or Enhanced Deduction	5 years
Domestic market enterprise with investment of not less than P500,000,000	ITH SCIT OR Enhanced Deduction	4 to 7 years 5 years
Domestic market enterprise with investment less than P500,000,000	ITH Enhanced Deduction	4 to 7 years 5 years

Period of Availment

Section 296

Commencement

Period of availment shall commence from the **actual start of commercial operations** which should be **within three (3) years** from the date of registration

Period of Availment

Section 296

Qualified Expansion or entirely new project may qualify to avail of a new set of incentives and its period of availment subject to qualifications under SIPP and performance review of FIRB.

Existing registered projects prior to the effectivity of CREATE may qualify to avail of the incentives under CREATE

Determination of Category

- LOCATION BASED ON LEVEL OF DEVELOPMENT
 - NCR
 - Metropolitan areas and Adjacent to NCR
 - Other Areas

- INDUSTRY OR ACTIVITY ACCORDING TO INDUSTRIAL PRIORITY IN SIPP

Determination of Category

FOR EXPORTERS AND CRITICAL DME			
LOCATION/INDUSTRY	TIER 1	TIER 2	TIER 3
NCR	4 ITH + 10 SCIT/ED	5 ITH + 10 SCIT/ED	6 ITH + 10 SCIT/ED
MM areas and adjacent to NCR	5 ITH + 10 SCIT/ED	6 ITH + 10 SCIT/ED	7 ITH + 10 SCIT/ED
All other areas	6 ITH + 10 SCIT/ED	7 ITH + 10 SCIT/ED	7 ITH + 10 SCIT/ED
FOR DOMESTIC MARKET ACTIVITIES			
NCR	4 ITH + 5 SCIT/ED	5 ITH + 5 SCIT/ED	6 ITH + 5 SCIT/ED
MM areas and adjacent to NCR	5 ITH + 5 SCIT/ED	6 ITH + 5 SCIT/ED	7 ITH + 5 SCIT/ED
All other areas	6 ITH + 5 SCIT/ED	7 ITH + 5 SCIT/ED	7 ITH + 5 SCIT/ED
AREAS RECOVERING FROM ARMED CONFLICT OR MAJOR DISASTER	ADDITIONAL 2 YEARS OF ITH		
THOSE RELOCATING FROM NCR	ADDITIONAL 3 YEARS OF ITH		

Fiscal Incentives Review Board

Section 297

Expanded Functions

- Exercise policy making and oversight function on administration and grant of tax incentives by IPAs
- Approve/disapprove the grant of tax incentives upon recommendation of IPAs (*applications not acted upon within 20 days shall be deemed approved*)
 - *Investment of 1B – delegated to IPA. Amount can be increased by FIRB*
- Approve applications for tax subsidies to GOCCs, GIs, Government Commissaries, and SUCs
- Formulate place-specific strategic investment plans during periods of recovery

Fiscal Incentives Review Board

Section 297

Expanded Functions

- Obtain information, summon, examine, inquire, and receive from GOCCs, GIs, Government Commissaries, SUCs, and LGUs, documents, records, books, or other data
- Decide on issues, after due hearing, concerning the approval, disapproval, cancellation, suspension, withdrawal, or forfeiture of incentives and subsidies (*adverse decisions by the FIRB may be appealed to the CTA within 30 days from receipt*)
- Promulgate rules and regulations

Fiscal Incentives Review Board

Section 297

Expanded Functions

- Cancel, suspend, or withdraw the enjoyment of fiscal incentives
- Require the submission of summaries of approved investments and incentives granted and benefits data
- Regularly publish data pertaining to amount of tax incentives, payments, and other related information
- Submit annual reports to the President

Fiscal Incentives Review Board

Section 297

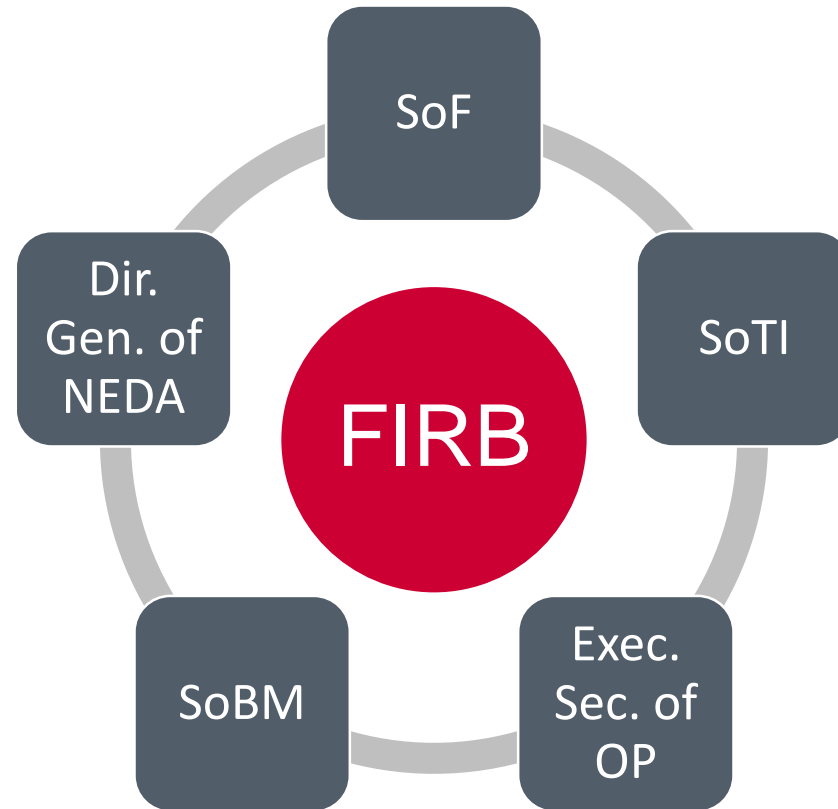
Expanded Functions

- Recommend to the President the grant of non-fiscal incentives
- Adopt policies for development and expansion of the domestic supply chain
- Exercise all other powers necessary or incidental

Fiscal Incentives Review Board

Section 298

Composition



Fiscal Incentives Review Board

Section 298

Formulation

May contain recommendations for types of non-fiscal support needed to:

create high-skilled jobs

increase the
sophistication of
products and services

expand domestic
supply and reduce
dependence of imports

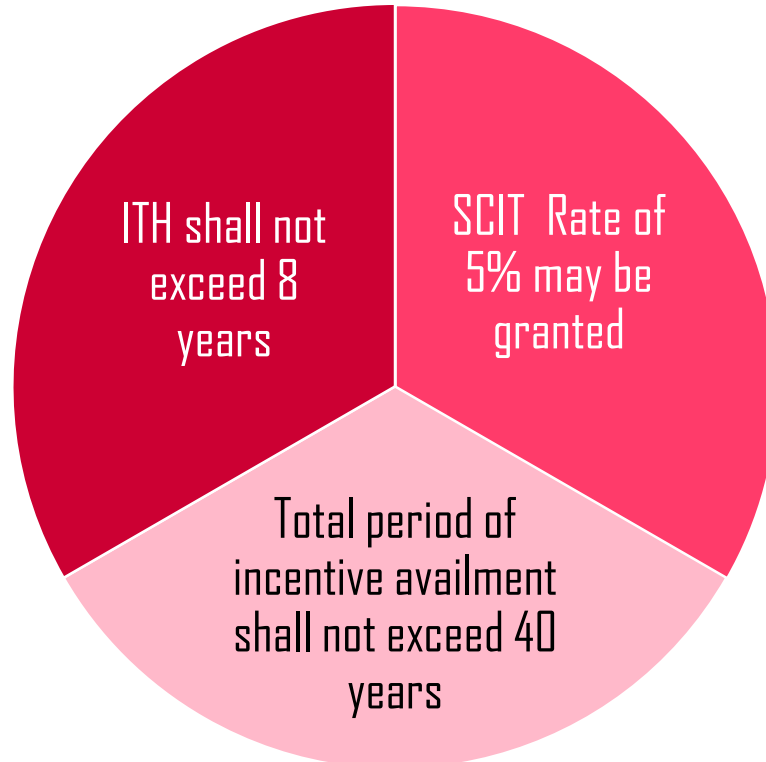
attract significant
foreign capital and
investment

The Strategic Investment Priority Plan shall be valid for three (3) years subject to review and amendment every three (3) years thereafter

Power of President to Grant Incentives

Section 301

Limitations



Upon recommendation of FIRB, the President can MODIFY THE MIX, PERIOD OR MANNER OF INCENTIVES.

Conditions for positive recommendation by FIRB

- ✓ Project has a comprehensive sustainable development plan
- ✓ Minimum investment capital of P50 Billion (or its equivalent in USD) or minimum direct employment of 10,000 within 3 years

Incentives Prior to CREATE – TRANSITORY PROVISIONS

Section 311

Rules:

- ✓ Registered businesses with granted ITH shall be allowed to continue for its remaining period
- ✓ Registered businesses with granted ITH and are entitled to 5% GIT after the ITH shall be allowed to avail the 5% GIT
- ✓ Registered businesses currently availing 5% GIT shall be allowed to continue for ten (10) years

Incentives AFTER CREATE – TRANSITORY PROVISIONS

Section 311

Rules:

- ✓ After the expiration of the transitory provisions, **EXPORT ENTERPRISES** Registered prior to CREATE shall have the option to reapply and avail of the incentives under CREATE for the same period
- ✓ Such incentive **may still be extended for a certain period not exceeding 10 years** at any one time.

GENERAL EFFECTIVITY

Unless specifically provided in the law, CREATE takes effect 15 days after complete publication in the official gazette or in a newspaper of general circulation.

TAX • LEGAL • CONSULTING

Holistic. Professional. Personal.



20th Floor, Chatham House
Rufino corner Valero Street
Makati City 1227, Philippines



+63 2 403 2001 ext. 300



info@bdblaw.com.ph



www.bdblaw.com.ph

THANK YOU