



12 September 2023

Hon. Joey Sarte Salceda
Chairperson
Committee on Ways and Means
House of Representatives
Quezon City



Dear Chairperson Salceda:

The undersigned members of the Joint Foreign Chambers of the Philippines (JFC) and the Information Technology and Business Process Association of the Philippines (IBPAP) write in relation to House Bill No. 8968 or the "CREATE MORE Act."



We fully support the intent of the bill to address uncertainties over the implementation of VAT and tax administration provisions of the CREATE Act. As the Philippines continues to compete with its neighbors as a destination for investments and business expansion, there is a continuing need to review and revise, as needed, the country's investment incentive policies to stay competitive. We thus thank the Chairperson and the Committee for initiating deliberation on this important measure.



In particular, we would like to highlight our support for proposals in the bill to: i) establish a simplified VAT refund system; ii) mandate the collection of the LGU share of 5% SCIT through IPAs instead of direct remittance to LGUs; iii) clarify the VAT regime for registered businesses; iv) define the power of the president to grant incentives; and v) allow registered IT and BPO projects or activities to undertake work-from-home schemes with a minimum on-site workforce of 30%.



We would also like to submit for your and the Committee's consideration the following recommendations which we believe will further refine the bill and allow it to be more responsive to the needs and concerns of investors:



I. Section 3 amending Section 112 of the NIRC:

a) Section 112 (C)

Recommendation:

“(C) Period within which Refund or Tax Credit of Input Taxes shall be Made. - In proper cases, the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the **DATE OF SUBMISSION OF THE DOCUMENTS PRESCRIBED BY THE COMMISSIONER, WHICH SHALL BE DEEMED EXHAUSTIVE**, in support of the application filed in accordance with Subsections



(A) and (B) hereof. Provided **THAT DURING THE 90-DAY PERIOD, THE TAXPAYER SHALL BE GIVEN A VENUE TO DISCUSS AND CHALLENGE THE FINDINGS BEFORE THE FINAL DECISION IS MADE.**

In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals: Provided, however, That failure on the part of any official, agent, or employee of the BIR to act on the application within ninety (90) days period or to provide the **COMPLETE DECISION IN WRITING WITHIN THREE (3) DAYS** shall be punishable under Section 269 of this Code.”

Rationale:

There should be restrictions on the documents requested by the BIR, and they should not go beyond what they have already prescribed.

Taxpayers should be allowed to discuss and challenge the findings of the BIR during the 90-day period

BIR’s full decision must be given to taxpayer within reasonable time so they will have sufficient time to assess whether an appeal should be made before the CTA

b) Section 112 (D)

Recommendation:

“D) Manner of Giving Refund. -. Refunds shall be made upon warrants drawn by the Commissioner or by his duly authorized representative without the necessity of being countersigned by the Chairman, Commission on Audit, the provisions of the Administrative Code of 1987 to the contrary notwithstanding: Provided, That refunds under this paragraph shall be subject to post audit by the Commission on Audit UNDER A RISK-BASED FRAMEWORK WHICH TAKES INTO ACCOUNT THE SIZE OF THE TAX REFUND, THE TRACK RECORD OF THE TAXPAYER, AND THE COMPLETENESS AND ADEQUACY IN FORM OF THE REQUIRED SUBMISSIONS: PROVIDED FURTHER, THAT A SIMPLIFIED AND STREAMLINED TAX REFUND SYSTEM FOR REGISTERED BUSINESS ENTERPRISES UNDER TITLE XIII OF THIS ACT SHALL BE ESTABLISHED IN CONSULTATION WITH THE COMMISSION ON AUDIT **AND THE INVESTMENT PROMOTION AGENCIES.**”



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Rationale:

The IPAs are more knowledgeable about what the RBEs need and how to help the RBEs in achieving their fiscal efficiency by eliminating government bureaucracy.



II. Section 4 amending Section 294 of the NIRC

Recommendation:

“(B) Special Corporate Income Tax (SCIT) Rate - For export enterprise, domestic market enterprise with a minimum investment capital of Five hundred million pesos (P500,000,000.00), and domestic market enterprise under the Strategic Investment Priority Plan engaged in activities that are classified as 'critical', a tax rate equivalent to five percent (5%) effective July 1, 2020, based on the gross income earned, in lieu of all national and local taxes.

THE TERM “NATIONAL TAXES” SHALL COMPRISE ALL TAXES PAID TO THE COMMISSIONER, EXCLUDING WITHHOLDING TAXES; WHILE THE TERM “LOCAL TAXES” SHALL COMPRISE OF LOCAL BUSINESS TAX, REAL PROPERTY TAX AND OTHER FEES PAID TO THE LOCAL GOVERNMENT UNITS.

xxx”

Rationale:

It is better to be specific on what will comprise these taxes to avoid uncertainties in its implementation.



III. Section 5 amending Section 295 of the NIRC

a) Section 295 (D) (1)

Recommendation:

“1. SALES TO ~~[AND SALES BY A]~~ REGISTERED **EXPORT** ENTERPRISE LOCATED IN A FREEPORT OR SPECIAL ECONOMIC ZONE AND PURSUING PURELY REGISTERED ACTIVITY WITHIN THAT ZONE **BY A VAT REGISTERED SUPPLIER**





FROM THE CUSTOMS TERRITORY SHALL BE ~~VAT-EXEMPT~~ SUBJECT TO ZERO-RATING;

2. SALES BY A REGISTERED EXPORT ENTERPRISE LOCATED IN A FREEPORT OR SPECIAL ECONOMIC ZONE AND PURSUING PURELY REGISTERED ACTIVITY WITHIN THAT ZONE TO A BUYER FROM THE CUSTOMS TERRITORY SHALL BE SUBJECT TO 12% VAT;"

Rationale:

To be at par with the group covered by Section 295 (D)(3).

b) Section 295 (D) (2)

Recommendation:

~~2~~ 3. SALES BY SUPPLIERS TO REGISTERED EXPORT ENTERPRISES ~~BY SUPPLIERS~~ WHOSE SALES ~~TO REGISTERED EXPORT ENTERPRISES~~ EXCEED SEVENTY PERCENT (70%) OF THEIR TOTAL SALES SHALL BE ~~VAT-EXEMPT~~ SUBJECT TO ZERO-RATING;"

Rationale:

Prior to RR No. 21-2021 and RR 9-2021 which amended Sections 106 and 108 of the Tax Code on export sales, sale of goods and services to export-oriented enterprises were subject to 0% rate.

This will reinstate that sales to export-oriented enterprises are deemed export sales subject to 0% VAT.

c) Section 295 (D) (3)

Recommendation:

~~3~~ 4. SALES BY SUPPLIERS TO REGISTERED EXPORT ENTERPRISES ~~NOT OPERATING IN A FREEPORT OR SPECIAL ECONOMIC ZONE~~ BY SUPPLIERS SHALL BE SUBJECT TO ZERO-RATING"

Rationale:

Prior to RR No. 21-2021 and RR 9-2021 which amended Sections 106 of the Tax Code on export sales, sales to those considered export sales under Executive





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Order No. 226, otherwise known as the Omnibus Investment Code of 1987, and other special laws were subject to 0% rate being an export sale.

This will reinstate that sales to REE registered with the BOI are deemed export sales subject to 0% VAT.

d) Section 295 (D) (4)

Recommendation:

“~~[4]~~ 5. SALES BY REGISTERED ~~[EXPORT]~~ BUSINESS ENTERPRISES, WHETHER DOMESTIC OR EXPORT, CURRENTLY AVAILING OF INCOME TAX HOLIDAY TO REGISTERED EXPORT ENTERPRISES BE SUBJECT TO ZERO-RATING;

Rationale:

This will limit application to sales to REEs to be consistent with the cross-border doctrine.

e) Section 295 (D) (5)

“~~[5]~~ 6. SALES BY REGISTERED BUSINESS ENTERPRISES, ~~[WHETHER DOMESTIC OR EXPORT]~~, CURRENTLY AVAILING OF THE SPECIAL CORPORATE INCOME TAX RATE ~~[TO REGISTERED EXPORT ENTERPRISES]~~ SHALL BE ~~[SUBJECT TO]~~ VAT-EXEMPT **TO THE EXTENT OF ITS REGISTERED ACTIVITY”**

Rationale:

Under Section 24 of RA No. 7916, as amended by RA 8748: In lieu of all local and national taxes (except RPT on land owned by developers), 5% GIE on its registered activity shall be paid by all business enterprises.

Provided such sales shall be to the extent related to the registered activity of the RBE enjoying 5% GIT, its sales (regardless of the type or class of IPA registration, including non-RBE) shall be VAT-exempt.

f) Section 295 (D) (6)

“~~[6]~~ 7. SALES BY REGISTERED BUSINESS ENTERPRISES OF VAT-EXEMPT IMPORTED CAPITAL EQUIPMENT, RAW MATERIALS, SPARE PARTS, AND ACCESSORIES TO REGISTERED EXPORT ENTERPRISES SHALL BE VAT-EXEMPT;”



Comment:

Note that under RMC No. 24-2022, if the purchaser is a registered export enterprise, regardless of location, the transaction is subject to VAT at zero-rate.

g) Section 295 (D) (7)

“~~[7]~~ **8. SALES BY SUPPLIERS WITHIN CUSTOMS TERRITORY TO EXISTING REGISTERED EXPORT ENTERPRISES SHALL BE SUBJECT TO ZERO-RATING; AND**

Comment:

Contradictory under Section 295 (D) (1) which states that sales to RBE (includes REE) shall be VAT-exempt.

h) Section 295 (D) (8)

“~~[8]~~ **9. ALL OTHER PURCHASES BY REGISTERED [BUSINESS] EXPORT ENTERPRISE LOCATED IN A FREEPORT OR SPECIAL ECONOMIC ZONE [USED FOR THEIR REGISTERED PROJECT] OR ACTIVITY SHALL BE SUBJECT TO ZERO-RATING.**

Rationale:

To make it consistent with the proposed amendment to Section 295(D)(1) and the cross-border/destination doctrine in that only location of freeport zone is needed to zero-rate purchases.

IV. Section 7 amending Section 309 of the NIRC

Recommendation:

"SEC. 309. Prohibition on Registered Activities. – EXCEPT THOSE REGISTERED PROJECTS OR ACTIVITIES PRIMARILY ENGAGED IN THE PROVISION OF SERVICES SUCH AS INFORMATION TECHNOLOGY (IT) OR BUSINESS PROCESS OUTSOURCING, A qualified registered project or activity under an Investment Promotion Agency administering an economic zone or freeport shall be exclusively conducted or operated within the geographical boundaries of the zone or freeport being administered by the Investment Promotion Agency in which the project or activity is registered: Provided, That a registered business enterprise may conduct or operate more than one qualified registered project or activity



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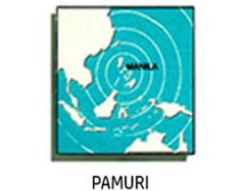
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within the same zone or freeport under the same Investment Promotion Agency: Provided, further, That any project or activity conducted or performed outside the geographical boundaries of the zone or freeport shall not be entitled to the incentives provided in this Act, unless such project or activity is conducted or operated under another Investment Promotion Agency.

A QUALIFIED PROJECT OR ACTIVITY PRIMARILY ENGAGED IN THE PROVISION OF SERVICES SUCH AS INFORMATION TECHNOLOGY (IT) OR BUSINESS PROCESS OUTSOURCING SHALL BE ALLOWED TO CONDUCT BUSINESS UNDER ALTERNATIVE WORK ARRANGEMENTS, SUCH AS THOSE PROVIDED FOR BY REPUBLIC ACT NO. 11165, OR THE "TELECOMMUTING ACT:" PROVIDED, THAT IN THE CASE OF QUALIFIED PROJECTS OR ACTIVITIES UNDER AN INVESTMENT PROMOTION AGENCY ADMINISTERING AN ECONOMIC ZONE OR FREEPORT, EMPLOYEES WORKING WITHIN THE GEOGRAPHICAL BOUNDARIES OF THE ZONE OR FREEPORT, AT ANY GIVEN TIME, SHALL NOT BE LESS THAN THIRTY PERCENT (30%) OF THE TOTAL WORKFORCE OF THE QUALIFIED PROJECT OR ACTIVITY. ~~PROVIDED FURTHER, THAT IN THE CASE OF QUALIFIED PROJECT OR ACTIVITY PRIMARILY ENGAGED IN THE PROVISION OF SERVICES SUCH AS INFORMATION TECHNOLOGY (IT) OR BUSINESS PROCESS OUTSOURCING REGISTERED WITH THE BOARD OF INVESTMENTS OR THE REGIONAL BOARD OF INVESTMENTS OF THE BANGSAMORO AUTONOMOUS REGION OF MUSLIM MINDANAO~~ SUCH QUALIFIED PROJECT OR ACTIVITY SHALL BE ALLOWED TO CONDUCT BUSINESS UNDER ALTERNATIVE WORK ARRANGEMENTS WITHOUT ANY LIMITATION ON HOW MUCH OF THE EMPLOYEES MAY BE WORKING UNDER SUCH ADOPTED ALTERNATIVE WORK ARRANGEMENTS.

Rationale:

The BOI, as an IPA, has no geographical boundary unlike PEZA and similar IPAs. This bill once enacted into law must be retroactively applied insofar as this provision is concerned, so those IT-BPM RBEs who availed of the paper transfer to the BOI will not be affected.

V. Section 8 amending Section 311 of the NIRC

Recommendation:

Insert new subsection D:

"xxx



(B) Registered business enterprises, whose projects or activities were granted an income tax holiday prior to the effectivity of this Act and that are entitled to the five percent (5%) tax on gross income earned incentive after the income tax holiday, shall be allowed to avail of the five percent (5%) tax on gross income earned incentive, INCLUDING ALL OF ITS CORRESPONDING EXEMPTIONS FROM LOCAL AND NATIONAL TAXES, based on Subsection (C); and



(C) Registered business enterprises currently availing of the five percent (5%) tax on gross income earned granted prior to the effectivity of this Act shall be allowed to continue availing the said tax incentive INCLUDING ALL OF ITS CORRESPONDING EXEMPTIONS FROM LOCAL AND NATIONAL TAXES, at the rate of five percent (5%) for ten (10) years.



(D) PROVIDED THAT THE VAT EXEMPTION ON IMPORTATION, VAT ZERO-RATING ON LOCAL PURCHASES, AND DUTY INCENTIVES OF REGISTERED BUSINESS ENTERPRISES, AS APPLICABLE, ARE NOT COVERED BY THE TRANSITORY PROVISION AND THESE INCENTIVES SHALL CONTINUE TO BE AVAILED OF BY THE REGISTERED BUSINESS ENTERPRISE INDEPENDENT FROM THE PERIOD OF INCOME TAX INCENTIVES AVAILMENT UNDER SUBSECTIONS (B) AND (C) ABOVE."



Rationale:

Sections 4 and 5 of RMC 120-2021 and the IRR of CREATE placed a limitation or a maximum period of availment of VAT zero-rating and exemption and customs duty exemption on importation of capital equipment, raw materials, spare parts, or accessories.



Time-bound income tax incentives similar to neighboring countries are understandable, but indirect tax incentives relating to VAT and import duties should not be time-bound consistent with the cross-border doctrine.

In addition, we also propose the following: i) include the same provision for activities registered after the effectivity of the CREATE and ii) to amend the CREATE IRR to delete time-bound provision of the indirect tax and duties incentives to be consistent with the provisions herein.



In addition to the above recommendations, we also strongly urge the Committee to reconsider the imposition of a sunset period for the 5% tax on gross income earned (GIE) granted to projects or activities registered prior to the effectivity of the CREATE Act. The predictability and ease of compliance offered by the 5% GIE incentive, in lieu





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of national and local taxes, was a major factor for the decision of many investors to locate in the Philippines. Retention of the 5% GIE without a sunset period for projects and activities to which the incentive committed prior to CREATE will improve confidence in the country's investment environment.

We thank the Committee for providing us the opportunity to provide our inputs on the bill. We hope that you will consider the points raised above and we look forward to working with the Committee.

Thank you and best regards,



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