

# **Corporate Recovery and Tax Incentives for Enterprise Act (CREATE)**

Republic Act No. 11534

# Tax Particulars - Section

## **NIRC OF 1997 (RA NO. 8424)**

- The National Internal Revenue Code of 1997 governs taxation in the Philippines. It establishes the basis for the country's tax laws, covering income tax, estate and donor's taxes, value-added tax (VAT), excise tax, and documentary stamp tax, among others. The Bureau of Internal Revenue (BIR) administers and enforces the NIRC, ensuring tax compliance and revenue generation for the government.

## **CREATE (RA NO. 11534)**

- On 26 March 2021, the President signed into law Republic Act (RA) No. 11534 or the Corporate Recovery and Tax Incentives for Enterprise (CREATE) Act. The law contains amendments to several provision of the National Internal Revenue Code of 1997 ("Tax Code"), primarily on the reduction of the corporate income tax rate and the introduction of a new title on tax incentives.

# Definition of corporation – Section 22

## NIRC OF 1997 (RA NO. 8424)

- The term 'corporation' shall include one person corporations, partnerships, no matter how created or organized, joint-stock companies, joint accounts (*cuentas en participacion*), associations, or insurance companies, but does not include general professional partnerships and a joint venture or consortium formed for the purpose of undertaking construction projects or engaging in petroleum, coal, geothermal and other energy operations pursuant

## CREATE (RA NO. 11534)

- Inclusion of "one person corporation" in the definition of corporations under the Tax Code.

# Definition of corporation – Section 22

## **NIRC OF 1997 (RA NO. 8424)**

[cont.] to an operating consortium agreement under a service contract with the Government.  
'General professional partnerships' are partnerships formed by persons for the sole purpose of exercising their common profession, no part of the income of which is derived from engaging in any trade or business.

## **CREATE (RA NO. 11534)**

- Inclusion of "one person corporation" in the definition of corporations under the Tax Code.

# **Tax exemption on winnings from Philippine Charity Sweepstakes Office (PCSO) - Section 25**

## **NIRC OF 1997 (RA NO. 8424)**

- Philippine Charity Sweepstakes and Lotto winnings are tax-exempt.

## **CREATE (RA NO. 11534)**

- Only winnings amounting to ten thousand pesos (PHP10,000) or less from PCSO Games are exempt from tax.

# Income tax rate on domestic corporations – Section 27(A)

## **NIRC OF 1997 (RA NO. 8424)**

- Domestic corporations are subject to 30% income tax on their net taxable income for income within and without the Philippines.

## **CREATE (RA NO. 11534)**

- Effective 1 July 2020, domestic corporations are subject to 25% income tax on their taxable income.

### **Additional provision:**

Domestic corporations with net taxable income not exceeding PHP5m and with total assets not exceeding PHP100m, excluding land on which the particular business entity's office, plant, and equipment are situated, are subject to 20% income tax.

# Option to be taxed at 15% of gross income – Section 27(A)

## **NIRC OF 1997 (RA NO. 8424)**

- The President may allow corporations the option to be taxed at 15% of gross income after the following conditions are satisfied:
  - Tax effort ratio of 20% of gross national product (GNP);
  - Ratio of 40% of income tax collection to total revenues;
  - VAT tax effort of 4% of GNP; and
  - 0.9% ratio of the consolidated public sector financial position.

## **CREATE (RA NO. 11534)**

- Repealed

# Option to be taxed at 15% of gross income – Section 27(A)

## **NIRC OF 1997 (RA NO. 8424)**

[cont.] The option shall be available only to firms whose ratio of cost of sales to gross sales or receipts does not exceed 55%.

## **CREATE (RA NO. 11534)**

- Repealed



# Income tax rate on proprietary educational institutions and hospitals – Section 27(B)

## NIRC OF 1997 (RA NO. 8424)

- Proprietary educational institutions and hospitals which are nonprofit shall pay a tax of 10% on their taxable income if the gross income from '*unrelated trade, business or other activity*' does not exceed 50% of the total gross income derived by such educational institution or hospitals from all sources.

## CREATE (RA NO. 11534)

- Beginning 1 July 2020 until 30 June 2023, the tax rate imposed under Section 27(B) shall be 1%.

# **Taxability of Government-owned or –Controlled Corporations, Agencies or Instrumentalities – Section 27(C)**

## **NIRC OF 1997 (RA NO. 8424)**

- Government Service Insurance System (GSIS), the Social Security System (SSS), the Philippine Health Insurance Corporation (PHIC) and the local water districts (LWDs) shall be exempt from tax.

## **CREATE (RA NO. 11534)**

- Inclusion of Home Development Mutual Fund (HDMF) in the exempt GOCCs, agency or instrumentality of the government.

# Intercorporate dividends – Section 27(D)(4)

## **NIRC OF 1997 (RA NO. 8424)**

- Dividends received by a domestic corporation from another domestic corporation shall not be subject to tax.

## **CREATE (RA NO. 11534)**

- In general, dividends received by a domestic corporation shall not be subject to tax.

### **Additional provision:**

For foreign-sourced dividends to be exempt, the following conditions shall be met:

1. The funds from such dividends actually received or remitted into the Philippines are reinvested in the

# Intercorporate dividends – Section 27(D)(4)

## **NIRC OF 1997 (RA NO. 8424)**

- Dividends received by a domestic corporation from another domestic corporation shall not be subject to tax.

## **CREATE (RA NO. 11534)**

[cont.] business operations of the domestic corporation in the Philippines within the next taxable year from the time the foreign-sourced dividends were received, and shall be limited to funding the working capital requirements, capital expenditures, dividend payments, investment in domestic subsidiaries, and infrastructure projects; and

2. The domestic corporation holds directly at least 20% of the outstanding

# Intercorporate dividends – Section 27(D)(4)

## **NIRC OF 1997 (RA NO. 8424)**

- Dividends received by a domestic corporation from another domestic corporation shall not be subject to tax.

## **CREATE (RA NO. 11534)**

[cont.] shares of the foreign corporation and has held the shareholdings for a minimum of two (2) years at the time of the dividend distribution.

# Temporary reduction of MCIT rate – Section 27(E)(1)

## **NIRC OF 1997 (RA NO. 8424)**

- A MCIT of two percent (2%) of the gross income is imposed beginning on the fourth taxable year immediately following the year in which a corporation commenced its business operations, when the minimum income tax is greater than the regular corporate income tax.

## **CREATE (RA NO. 11534)**

- Effective 1 July 2020 until 30 June 2023, the MCIT rate shall be one percent (1%).

# Income tax rate on RFCs – Section 28(A)(1)

## **NIRC OF 1997 (RA NO. 8424)**

- RFCs are subject to 30% income tax on their net taxable income from Philippine-sourced income.

## **CREATE (RA NO. 11534)**

- Effective 1 July 2020, RFCs are subject to 25% income tax on their taxable income.

# Option to be taxed at 15% of gross income – Section 28(A)(1)

## **NIRC OF 1997 (RA NO. 8424)**

- RFCs shall be granted the option to be taxed at 15% on gross income under the same conditions, as provided in Section 27(A).

## **CREATE (RA NO. 11534)**

- Repealed



# Temporary reduction of MCIT rate – Section 28(A)(2)

## **NIRC OF 1997 (RA NO. 8424)**

- A MCIT of two percent (2%) of the gross income is imposed beginning on the fourth taxable year immediately following the year in which a corporation commenced its business operations, when the minimum income tax is greater than the regular corporate income tax.

## **CREATE (RA NO. 11534)**

- Effective 1 July 2020 until 30 June 2023, the MCIT rate shall be one percent (1%).

# Offshore banking units (OBU) - Section 28(A)(4)

## **NIRC OF 1997 (RA NO. 8424)**

- Income derived by OBUs from foreign currency transactions with non-residents, other than OBUs, local commercial banks, shall be exempt from all taxes. Any interest income derived from foreign currency loans granted to residents shall be subject to 10% final tax. Any income of non-residents from transactions with OBUs shall be exempt from tax.

## **CREATE (RA NO. 11534)**

- Repealed

# **Regional operating headquarters (ROHQ) - Section 28(A)(5)(b)**

## **NIRC OF 1997 (RA NO. 8424)**

- ROHQs are subject to 10% income tax on their taxable income.

## **CREATE (RA NO. 11534)**

- Effective, 1 January 2022, ROHQs shall be subject to regular corporate income tax at 25%.

# **Interest income derived from a depository bank under the expanded foreign currency deposit system – Section 28(A)(7)(a)**

## **NIRC OF 1997 (RA NO. 8424)**

- Interest income of an RFC from a depository bank under the expanded foreign currency deposit system shall be subject to a final income tax rate of 7½%.

## **CREATE (RA NO. 11534)**

- The tax rate is increased from 7½% to 15%.

# Capital gains tax from sale of shares of stock not traded in the stock exchange – Section 28(A)(7)(c)

## **NIRC OF 1997 (RA NO. 8424)**

- Capital gains from sale of shares of stock not traded in the stock exchange of an RFC shall be taxed as follows:
  - 5% of the capital gain not exceeding PHP100,000; and
  - 10% on any amount in excess thereof.

## **CREATE (RA NO. 11534)**

- The capital gains tax is increased from 5%/10% to 15%.

# Income tax rate on NRFCs – Section 28(B)(1)

## **NIRC OF 1997 (RA NO. 8424)**

- NRFCs are subject to income tax on their Philippine-sourced gross income at the rate of 30%.

## **CREATE (RA NO. 11534)**

- Effective 1 January 2021, NRFCs are subject to 25% tax on their Philippine-sourced gross income.

# Intercorporate dividends (Tax sparing rule) - Section 28(B)(5)(b)

## **NIRC OF 1997 (RA NO. 8424)**

- A final withholding tax of 15% shall be imposed on cash and/or property dividends received from a domestic corporation provided that the country of domicile of the NRFC shall allow a credit against the tax due from the taxes deemed to have been paid in the Philippines equivalent to 20%, which is the difference between the 15% and 35% RGT.

## **CREATE (RA NO. 11534)**

- Effective 1 July 2020, the credit against the tax due shall be equivalent to the difference between the regular income tax (*i.e.*, 25%) and the 15% tax on dividends.

# Capital gains tax from sale of shares of stock not traded in the stock exchange – Section 28(B)(5)(c)

## **NIRC OF 1997 (RA NO. 8424)**

- Capital gains from sale of shares of stock not traded in the stock exchange of an RFC shall be taxed as follows:
  - 5% of the capital gain not exceeding PHP100,000; and
  - 10% on any amount in excess thereof.

## **CREATE (RA NO. 11534)**

- The capital gains tax is increased from 5%/10% to 15%.



# Repeal of IAET – Section 29

## **NIRC OF 1997 (RA NO. 8424)**

- The IAET shall apply to every corporation formed or availed for the purpose of avoiding the income tax with respect to its shareholders or the shareholders of any other corporation, by permitting earnings and profits to accumulate instead of being divided or distributed.

## **CREATE (RA NO. 11534)**

- Repealed

# Additional deduction on labor training expenses – Section 34(V)

## NIRC OF 1997 (RA NO. 8424)

- No existing provision

## CREATE (RA NO. 11534)

- **Section 34(V)** Additional deduction from taxable income of one-half ( $\frac{1}{2}$ ) of the value of labor training expenses incurred for skills development of enterprise-based trainees enrolled in:
  - Public senior high schools
  - Public higher education institution
  - Public technical and vocational institutions

# Additional deduction on labor training expenses – Section 34(V)

## **NIRC OF 1997 (RA NO. 8424)**

- No existing provision

## **CREATE (RA NO. 11534)**

[cont.] and duly covered by an apprenticeship agreement under the Labor Code of the Philippines.

For the additional deduction, the enterprise shall secure proper certification from the DepEd, TESDA, or CHED.

Such deduction shall not exceed ten percent (10%) of direct labor wage.

# On interest expense limitation – Section 34(B)(1)

## **NIRC OF 1997 (RA NO. 8424)**

- The deductible interest expense shall be reduced by 33% of the interest income subjected to final tax.

## **CREATE (RA NO. 11534)**

- The deductible interest expense shall be reduced by twenty percent (20%) of the interest income subjected to final tax.

If the interest income is adjusted in the future, the interest expense reduction rate shall be adjusted accordingly based on the prescribed standard formula.

# Tax free exchanges – Section 40(C)(2)

## **NIRC OF 1997 (RA NO. 8424)**

- No gain or loss shall be recognized if in pursuance of a plan of merger or consolidation –
  - a. 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
  - b. A shareholder exchanges stock in a corporation, which is a party to the merger or consolidation, solely for the

## **CREATE (RA NO. 11534)**

- 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. A reorganization is defined as:
  - a. 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

# Tax free exchanges – Section 40(C)(2)

## NIRC OF 1997 (RA NO. 8424)

[cont.] stock of another corporation also a party to the merger or consolidation; or

c. A security holder of a corporation, which is a party to the merger or consolidation, exchanges his securities in such corporation, solely for stock or securities in such corporation, a party to the merger or consolidation.

No gain or loss shall also be recognized if property is transferred to a corporation by

## CREATE (RA NO. 11534)

[cont.] merger or consolidation; or

b. 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

# Tax free exchanges – Section 40(C)(2)

## **NIRC OF 1997 (RA NO. 8424)**

[cont.] 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: Provided, that stocks issued for services shall not be considered as issued in return for property.

## **CREATE (RA NO. 11534)**

[cont.]

c. 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

# Tax free exchanges – Section 40(C)(2)

## **NIRC OF 1997 (RA NO. 8424)**

[cont.] 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: Provided, that stocks issued for services shall not be considered as issued in return for property.

## **CREATE (RA NO. 11534)**

[cont.]

d. 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

e. A reincorporation, which shall mean the formation of the same corporate



# Tax free exchanges – Section 40(C)(2)

## **NIRC OF 1997 (RA NO. 8424)**

[cont.] 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: Provided, that stocks issued for services shall not be considered as issued in return for property.

## **CREATE (RA NO. 11534)**

[cont.]

business with the same assets and the same stockholders surviving under a new charter.

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

# Tax free exchanges – Section 40(C)(2)

## **NIRC OF 1997 (RA NO. 8424)**

[cont.] 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: Provided, that stocks issued for services shall not be considered as issued in return for property.

## **CREATE (RA NO. 11534)**

[cont.]

control of said corporation: Provided, That stocks issued for services shall not be considered as issued in return for property.

Sale or exchanges of property used for business for shares of stock covered under this Subsection shall not be subject to value-added tax.

In all of the foregoing instances of exchange of property, prior Bureau of Internal Revenue confirmation or tax ruling

# Tax free exchanges – Section 40(C)(2)

## **NIRC OF 1997 (RA NO. 8424)**

[cont.] 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: Provided, that stocks issued for services shall not be considered as issued in return for property.

## **CREATE (RA NO. 11534)**

[cont.]

shall not be required for purposes of availing the tax exemption.

# On the definition of control – Section 40(C)(6)(c)

## **NIRC OF 1997 (RA NO. 8424)**

- The term "control", when used in this Section shall mean ownership of stocks in a corporation possessing at least fifty one percent (51%) of the total voting power of all classes of stocks entitled to vote.

## **CREATE (RA NO. 11534)**

- The definition applies to control after the transfer of property.

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.

# Review by the DoF of the regulations and processes for withholding of creditable tax – Section 57

## NIRC OF 1997 (RA NO. 8424)

- No existing provision

## CREATE (RA NO. 11534)

- **Section 57** is amending requiring the DoF to review, at least once every three (3) years, regulations and processes for withholding of creditable tax and direct the BIR to amend the rules and regulations if found that the same adversely and materially impact the taxpayer.

# VAT exemption of sale of real properties – Section 109(1)(P)

## **NIRC OF 1997 (RA NO. 8424)**

- Sale of real property not primarily held for sale to customers or held for lease in the ordinary course of trade or business, or real property utilized for low-cost and socialized housing as defined by Republic Act No. 7279, otherwise known as the Urban Development and Housing Act of 1992, and other related laws, residential lot valued at One million five hundred thousand pesos (PHP1.5m) and below, house and lot, and other residential

## **CREATE (RA NO. 11534)**

- Sale of real property not primarily held for sale to customers or held for lease in the ordinary course of trade or business, or real property utilized for low-cost and socialized housing, and other lot's value is increased to PHP2.5m.

Sale of house and lot, and other residential dwellings' value is increased to PHP4.2m.

Beginning 1 January 2024, and every three (3) years thereafter, the amount herein stated shall be adjusted to its present value.

# VAT exemption of sale of real properties – Section 109(1)(P)

## **NIRC OF 1997 (RA NO. 8424)**

[cont.] dwellings valued at Two million five hundred thousand pesos (PHP2.5m) and below.

Provided, That beginning January 1, 2021, the VAT exemption shall only apply to sale of real properties not primarily held for sale to customers or held for lease in the ordinary course of trade or business, sale of real property utilized for socialized housing as defined by RA 7279, sale of house and lot, and other residential dwellings with selling price of not more

## **CREATE (RA NO. 11534)**

- Sale of real property not primarily held for sale to customers or held for lease in the ordinary course of trade or business, or real property utilized for low-cost and socialized housing, and other lot's value is increased to PHP2.5m.

Sale of house and lot, and other residential dwellings' value is increased to PHP4.2m.

Beginning 1 January 2024, and every three (3) years thereafter, the amount herein stated shall be adjusted to its present value.

# VAT exemption of sale of real properties – Section 109(1)(P)

## **NIRC OF 1997 (RA NO. 8424)**

[cont.] than Two million pesos (PHP2m).

Provided, further that every three (3) years thereafter, the amount herein stated shall be adjusted to its present value using the Consumer Pricing Index, as published by the Philippine Statistics Authority (PSA).

## **CREATE (RA NO. 11534)**

- Sale of real property not primarily held for sale to customers or held for lease in the ordinary course of trade or business, or real property utilized for low-cost and socialized housing, and other lot's value is increased to PHP2.5m.

Sale of house and lot, and other residential dwellings' value is increased to PHP4.2m.

Beginning 1 January 2024, and every three (3) years thereafter, the amount herein stated shall be adjusted to its present value.



# **VAT exemption of sale, importation, printing or publications of literary works – Section 109(R)**

## **NIRC OF 1997 (RA NO. 8424)**

- Sale, importation, printing or publication of books and any newspaper, magazine, review or bulletin which appears at regular intervals with fixed prices for subscription and sale and which is not devoted principally to the publication of paid advertisements.

## **CREATE (RA NO. 11534)**

- Modified to include journals and any educational reading materials covered by the UNESCO Agreement on the importation of educational, scientific, and cultural materials, including the digital or electronic format. Provided, that the materials enumerated are not devoted principally to the publication of paid advertisements.

# **VAT exemption on the sale or importation of medicines for cancer, mental illness, tuberculosis, and kidney diseases – Section 109(AA)**

## **NIRC OF 1997 (RA NO. 8424)**

- Sale or importation of prescription drugs and medicines for cancer, mental illness, tuberculosis, and kidney diseases shall be exempt from VAT beginning 1 January 2023.

## **CREATE (RA NO. 11534)**

- Effectivity of the VAT exemption is moved to 1 January 2021.

# On the exemption of health related materials and drugs – Section 109(BB)

## NIRC OF 1997 (RA NO. 8424)

- No existing provision

## CREATE (RA NO. 11534)

- **Section 109(BB)** Effective 1 January 2021 until 31 December 2023, the following are exempt from Value-added tax (VAT):
  1. Capital equipment, its spare parts and raw materials, necessary for the production of personal protective equipment components for COVID-19 prevention.
  2. All drugs, vaccines and medical devices specifically prescribed and directly used

# On the exemption of health related materials and drugs – Section 109(BB)

## **NIRC OF 1997 (RA NO. 8424)**

- No existing provision

## **CREATE (RA NO. 11534)**

[cont.] for the treatment of COVID-19. Within sixty (60) days of effectivity of this Act, and every three (3) months thereafter, the Department of Health (DOH) shall issue a list of prescription drugs and medical devices covered.

3. Drugs for the treatment of COVID-19 approved by the Food and Drug Administration (FDA) for use in clinical trials, including raw materials directly necessary for the production of such

# On the exemption of health related materials and drugs – Section 109(BB)

## **NIRC OF 1997 (RA NO. 8424)**

- No existing provision

## **CREATE (RA NO. 11534)**

[cont.] drugs. The Department of Trade and Industry (DTI) shall certify that such are not locally available or insufficient in quantity or not in accordance with the quality or specification required.

Above exemptions are subject to post audit by the BIR or Bureau of Customs as may be applicable.

# Tax on persons exempt from VAT – Section 116

## **NIRC OF 1997 (RA NO. 8424)**

- Any persons whose sales or receipts are exempt under Section 109(V) of this Code from the payment of value-added tax and who is not a VAT-registered person shall pay a tax equivalent to three percent (3%) of his gross quarterly sales or receipts.

## **CREATE (RA NO. 11534)**

- Effective 1 July 2020 until 30 June 2023, the rate shall be one percent (1%).

# **Period to grant refund of taxes erroneously or illegally received or penalties imposed without authority – Section 204(C)**

## **NIRC OF 1997 (RA NO. 8424)**

- No period provided for the Commissioner within which to act on the claim for refund.

## **CREATE (RA NO. 11534)**

- The Commissioner shall grant refund for taxes or penalties within ninety (90) days from date of complete submission of the documents. In case of denial, the Commissioner shall state in writing the factual and legal basis for such denial.

In case of full or partial denial of the claim, the taxpayer affected may, within thirty (30) days from receipt of the denial, appeal the decision with the Court of Tax Appeals (CTA).

# **New Title XIII (Tax Incentives) under CREATE**

Republic Act No. 11534



# Tax Incentives – Section 294

- Subject to the conditions and period of availment in Section 295 and Section 296, the following types of tax incentives maybe granted to registered projects or activities:
  - A. Income Tax Holiday (ITH)
  - B. Special Corporate Income Tax (SCIT) of 5% on the gross income earned, in lieu of all taxes, both national and local, effective 1 July 2020 for export enterprise
  - C. Enhanced Deductions

For export enterprise, domestic market enterprise and critical domestic market enterprise, the following may be allowed as deductions:

- Depreciation Allowance of Qualified Capital Expenditures:
  - 10% tax allowance for buildings
  - 20% tax allowance for machineries and equipment

# Tax Incentives – Section 294

[cont.]

- Labor Expense: 50% additional deduction on labor expense
- Research and Development ("R&D"): 100% additional deduction on R&D expense
- Training Expense: 100% additional deduction on training expense
- Domestic Input Expense: 50% additional deduction on domestic input expense
- Power Expense: 50% additional deduction on power expense
- Reinvestment allowance to manufacturing industry: maximum of 50% deduction on the amount of undistributed profit or surplus that is reinvested by a manufacturing registered business enterprise as determined in the SIPP. The deduction shall be allowed for a period of five (5) years from the time of reinvestment.

# Tax Incentives – Section 294

[cont.]

- Enhanced Net Operating Loss Carry-over: net operating loss during the first three (3) years from the start of commercial operation which had not been previously offset as deduction from gross income shall be allowed as a deduction. The deduction may be claimed within the next five (5) consecutive taxable years immediately following the year of such loss.
- D. Duty exemption on importation of capital equipment, raw materials, spare parts, or accessories
- E VAT exemption on importation and VAT zero-rating on local purchases.

# Conditions for income tax incentives – Section 295

- The tax incentives in the preceding section shall be governed by the following rules:
  - A. The ITH shall be followed by the SCIT rate or enhanced deductions
  - B. The SCIT rate or enhanced deductions shall be granted at the option of the export enterprise, and in no case shall the enhance deductions be granted simultaneously with the SCIT rate.
  - C. The following conditions for the availment of each enhance deductions shall be complied with:
    - Depreciation Allowance for Qualified Capital Expenditures: allowed for assets that are directly related to the registered enterprise's production of goods and services other than administrative and other support services
    - Labor expense: shall not include salaries, wages, benefits, and other personnel costs incurred for managerial, administrative, indirect labor, and support services

# Conditions for income tax incentives – Section 295

[cont.]

- Research and development expense: shall only apply to R&D directly related to the registered project or activity of the entity and shall be limited to local expenditure incurred for salaries of Filipino employees and consumable and payments to local R&D organizations
- Training expenses: shall only to trainings, as approved by the IPAs based on the SIPP, given to the Filipino employees engaged directly in the registered business enterprise's production of goods and services
- Domestic input expense: shall only apply to those directly related to and actually used in the registered export project or activity of the registered business enterprise
- Power expense: shall only to power utilized for the registered project or activity
- Reinvestment allowance to manufacturing industry: shall be determined in the SIPP

# Conditions for customs duty and VAT exemption – Section 295

[cont.]

Customs duty exemption on capital equipment: Registered enterprise may be exempted to the extent of 100% of the customs duty subject to the following conditions:

1. The capital equipment, raw materials, spare parts, or accessories are **directly and reasonably needed** and will be used exclusively in and as part of the direct costs, are not produced or manufactured domestically in sufficient quantity, or of comparable quality, and at reasonable prices.
2. **Approval of the IPA** shall be obtained prior to importation.

Part-time utilization of the equipment in a non-registered activity shall be allowed subject to the **payment of the proportionate taxes and duties in proportion to its utilization.**

Use of the equipment for non-registered activities at any time **within 5 years** from date of

# Conditions for customs duty and VAT exemption – Section 295

[cont.]

importation shall be subject to prior approval of the concerned IPA, and payment of taxes and customs duties that were not paid upon its importation.

Subsequent sale, transfer or disposition of the capital equipment and/or spare parts which was granted tax and customs duty exemption shall be subject to the approval of the IPA and shall be allowed only under the following circumstances:

1. If made to another enterprise availing customs duty exemption on imported capital equipment, raw materials, spare parts and/or accessories;
2. If made to another enterprise not availing of customs duty exemption on imported capital equipment, raw materials, spare parts, and/or accessories, upon payment of any taxes and duties due on the net book value of the capital equipment, raw materials, spare parts, and/or accessories to be sold;

# Conditions for customs duty and VAT exemption – Section 295

[cont.]

3. Exportation of capital equipment, raw materials, spare parts, accessories or source documents, or those required for pollution abatement and control;
4. For reasons of proven technical obsolescence; or
5. If donated to TESDA, SUCs, or DepEd and CHED-accredited schools provided that the donation shall be exempt from import duties and tax, including donor's tax.

The registered enterprise and the vendee, transferee, or assignee shall be **solidarily liable to pay twice the amount of duty exemption** that should have been paid during its importation for sales, transfers, and dispositions without prior approval.

The sale, transfer, or disposition of the capital equipment, raw materials, spare parts, or accessories made after five (5) years from date of importation shall require that prior notice be given by the registered business enterprise to the IPA.



# Conditions for customs duty and VAT exemption – Section 295

[cont.]

Even if the sale, transfer, or disposition of the capital equipment was made after five (5) years from the date of importation with notice to the IPA, the registered enterprise is still liable to pay the duties based on the net book value of the capital equipment if it has violated any of its registration terms and conditions.

VAT exemption on importation and VAT zero-rating on local purchases: shall only apply to goods and services directly and exclusively used in the registered project or activity by registered business enterprise. Sales receipts and other income derived from non-registered project or activity shall be subject to appropriate taxes.

# Period of availment – Section 296

- The period for the availment of incentive shall be as follows:
  - (A) For export enterprise
    - ITH period of 4-7 years depending on location and industry priorities
    - Followed by SCIT rate or enhanced deductions for 10 years
  - (B) For domestic market enterprise under SIPP
    - ITH period of 4-7 years
    - Followed by enhanced deduction for 5 years

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

Existing registered projects or activities prior to the effectivity may qualify to register and

# Period of availment – Section 296

[cont.] avail of the incentives granted for the prescribed period subject to the criteria and conditions set forth in the SIPP.

The period of availment shall commence from the actual start of commercial operations with the registered business enterprise availing of the tax incentives within three (3) years from the date of registration, *unless* otherwise provided in the SIPP.

Upon expiration of the transitory period, export enterprise registered prior to the effectivity of this Act shall have the option to reapply and avail of the incentives, subject to the conditions and qualifications set forth in the SIPP and performance review by the FIRB.

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

1. National Capital Region ("NCR")

# Period of availment – Section 296

[cont.]

2. Metropolitan areas (as determined by the National Economic and Development Authority ("NEDA")) or areas contiguous or adjacent to the NCR
3. All other areas

The SIPP shall define the coverage of the tiers and provide the conditions for qualifying activities:

- **Tier I** activities shall include activities that:
  1. have 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, upgradin or moving up the value chain;

# Period of availment – Section 296

[cont.]

4. provide essential support for sectors that are critical to industrial development; or
  5. are emerging owing to potential comparative advantage.
- **Tier II** activities 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, breakthrough in science and health, and high paying jobs;
    2. generation of new knowledge and intellectual property registered and/or licensed in the Philippines;

# Period of availment – Section 296

[cont.]

3. commercialization of patents, industrial designs, copyrights and utility models owned or co-owned by a registered business enterprise;
4. highly technical manufacturing; or
5. are critical to the structural transformation of the economy and require substantial catch-up efforts.

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

# Period of availment – Section 296

[cont.]

- 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 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

# Period of availment – Section 296

[cont.]

- 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 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



# Period of availment – Section 296

[cont.]

Additional two (2) years ITH shall be granted to projects or activities of registered enterprise located in areas recovering from armed conflict or a major disaster.

Additional three (3) years ITH shall be granted to projects or activities of registered prior to the effectivity of this Act, or under the incentive system when such entities relocated from the NCR. The ITH period shall commence at the completion of the relocation of the operations.

The industry and localization prioritization shall be subject to review and revision every three (3) years in accordance with the SIPP.

# Power of the President to grant incentives – Section 301

- Notwithstanding the provisions of Sections 295 and 296, the President may, in the interest of national and economic development and upon recommendation of the FIRB, modify the mix, period and manner of availment of incentives or craft the appropriate financial support package.
  - The grant of ITH shall not exceed eight (8) years
  - And thereafter, SCIT rate of 5% may be granted
  - Total period of incentive availment must not exceed 40 years

Criteria in recommending the modified period or manner of availment of incentives are as follows:

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

# Power of the President to grant incentives – Section 301

[cont.]

- Minimum investment capital of PHP50bn or its equivalent in US dollars or a minimum direct local employment generation of at least 10,000 within three (3) years from the issuance of the certificate of entitlement

# Qualifications of a registered business enterprise for tax incentives – Section 304

- A registered enterprise must:
  - A. be engaged in a project or activity included in the 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 undertaken by the enterprise separately from the aggregate investments, revenues, cost, and profits and losses of the whole enterprise; or establish a separate corporation for each registered project, if the IPA should so require;
  - D. comply with the e-receipting and e-sales requirement in accordance with Sections 237 and 237-A of this Code; and
  - E. submit annual reports of beneficial ownership of the organization and related parties

# Qualifications of a registered business enterprise for tax incentives – Section 304

- A registered enterprise must:
  - A. be engaged in a project or activity included in the 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 undertaken by the enterprise separately from the aggregate investments, revenues, cost, and profits and losses of the whole enterprise; or establish a separate corporation for each registered project, if the IPA should so require;
  - D. comply with the e-receipting and e-sales requirement in accordance with Sections 237 and 237-A of this Code; and
  - E. submit annual reports of beneficial ownership of the organization and related parties

# Filing of Tax Returns and submission of Tax Incentives Report – Section 305

- Registered enterprises are required to:
  - File all their tax returns and pay their tax liabilities on or before the deadline using the electronic facilities of the BIR, or through RDOs for those without access to such electronic facilities;
  - File a complete annual tax incentives report with their respective IPAs or other government agencies administering tax incentives;
  - File a complete annual benefits report with their respective IPAs or other government agencies administering tax incentives;
  - Submit to FIRB the soft copies of the complete annual tax incentives report and complete annual benefits report.

Within 60 calendar days from the statutory deadline for filing of the relevant tax returns, IPAs and other government agencies administering tax incentives shall submit to the BIR their respective annual tax incentives reports based on the list of registered

# **Filing of Tax Returns and submission of Tax Incentives Report – Section 305**

[cont.] business enterprise and other registered enterprise which have filed their tax incentives report.

# Penalties for noncompliance with filing and reportorial requirements – Section 308

- Appropriate IPA may impose penalties for failure to comply with the filing and reportorial requirements:

Violation	Fine
1st Violation	Payment of a fine amounting to PHP100,000.00.
2nd Violation	Payment of a fine amounting to PHP500,000.00.
3rd Violation	<p>Cancellation by FIRB of the registration of the business enterprise with the IPA or other government agency administering tax incentives.</p> <p>If not due to the fault of the registered business, the same shall not be the ground for the suspension of the ITH and/or other tax incentives availment.</p>



# **Penalties for noncompliance with filing and reportorial requirements – Section 308**

[cont.]

After due process, the FIRB or the concerned IPA may cancel the registration, suspend the enjoyment of incentive benefits and/or require refund of incentives enjoyed by a registered business enterprise for any material misrepresentation of information for the purpose of availing more incentives that what it is entitled to.

# Investments prior to the effectivity of this Act (sunset provision) - Section 311

- Registered business enterprise with incentives granted prior to the effectivity of this act shall be allowed the following:
  - A. Those granted only an ITH prior to the effectivity of this Act shall be allowed to continue with its availment for the remaining period, as specified in the terms and conditions of their registration. For those that have been granted the ITH but have not yet availed of the incentive upon the effectivity of this Act, they may use the ITH for the period specified in the terms and condition of their registration.
  - B. Those granted an ITH prior to the effectivity of this Act and are entitled to five percent (5%) tax on gross income earned (GIE), shall be allowed to avail of the 5% GIE incentive based on the subsection (C); and
  - C. Those availing of the 5% tax on GIE prior to the effectivity of this Act shall be allowed to continue availing the said incentive for ten (10) years.