MALACAÑAN PALACE
MANILA

MAR 26 2021

THE HONORABLE SPEAKER AND
THE LADIES AND GENTLEMEN OF
THE HOUSE OF REPRESENTATIVES

In accordance with my firm commitment to uplift the lives of the Filipino people and pave the path for economic recovery and inclusive growth, I sign into law Republic Act (RA) No. **11534**, entitled **"AN ACT REFORMING THE CORPORATE INCOME TAX AND INCENTIVES SYSTEM, AMENDING FOR THE PURPOSE SECTIONS 20, 22, 25, 27, 28, 29, 34, 40, 57, 109, 116, 204 AND 290 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND CREATING THEREIN NEW TITLE XIII, AND FOR OTHER PURPOSES,"** or the **"Corporate Recovery and Tax Incentives for Enterprises (CREATE) Act."**

I. GENERAL COMMENTS

After more than twenty years of deliberations on the countless versions filed in Congress, corporate income tax reform and fiscal incentives rationalization has finally come to fruition. It comes at an opportune time, since it will serve as a fiscal relief and recovery measure for Filipino businesses still suffering from the effects of the COVID-19 pandemic.

This Act lowers the highest ASEAN corporate income tax rate of thirty (30) percent to twenty (20) percent for micro, small, and medium enterprises (MSMEs) and twenty-five (25) percent for other corporate taxpayers. It also plugs tax leakages through the rationalization of the fiscal incentives granted to our investors, and shifts the administration of such incentives towards a system that is performance-based, targeted, time-bound, and transparent.

We thank the legislators of the 18th Congress for this monumental breakthrough, particularly the Chairpersons of the House Committee on Ways and Means and the Senate Committee on Ways and Means, and the capable leadership of both Houses of Congress.

II. DIRECT VETO

To ensure that the objectives of this vital piece of legislation is achieved, I invoke the power vested in me by Article VI, Section 27 (2) of the Constitution, which provides that "the President shall have the power to veto any particular item or items in an appropriation, revenue, or tariff bill," and hereby register the following line-item vetoes to this bill:

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THE PRESIDENT OF THE PHILIPPINES

A. Increasing the value-added tax (VAT)-exempt threshold on sale of real property

I am constrained to veto item (P) of the amended Section 109 of the National Internal Revenue Code of 1997, as amended (Tax Code), under Section 12 of this Act, to wit:

> **"(P) Sale of real properties 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 Two million five hundred thousand Pesos (P2,500,000.00) and below, house and lot, and other residential dwellings valued at Four million two hundred thousand Pesos (P4,200,000.00) and below: *Provided,* That beginning January 1, 2024 and every three (3) years thereafter, the amounts herein stated shall be adjusted to present values using the Consumer Price Index, as published by the Philippine Statistics Authority (PSA)";**

Under the Tax Code, as amended by the TRAIN Law, the sales of house and lot and other residential dwellings valued at not more than P2.5 million shall be VAT-exempt. The exemption is targeted to provide relief to buyers of socialized housing and base-level economic housing. The amendment in the CREATE Act increases the VAT-threshold to up to P4.2 million. In effect, this will benefit even those not originally targeted for the VAT-exemption—those who can actually afford proper housing. This results in a tax exemption that is highly distortive and exacts a heavy price on the taxpaying community. The provision is also prone to abuse, as properties can be parceled into lots so that their individual values fall within the VAT-exempt threshold.

If not vetoed, the estimated revenue loss from the foregoing is P155.3 billion from 2020 to 2030, which could be used in public goods to benefit the poor directly.

B. 90-day period for the processing of general tax refunds

For being administratively impracticable, I am constrained to veto the whole of Section 14 of this Act, to wit:

> **"SEC. 14. Section 204 of the National Internal Revenue Code of 1997, as amended, is hereby further amended to read as follows:**
>
> > **"SEC. 204. *Authority of the Commissioner to Compromise, Abate, and Refund or Credit Taxes.* –The Commissioner may –**
> > **"(A) x xx**
> > **"(B) x xx**
> > **"(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the**

Commissioner a claim or refund within two (2) years after the payment of the tax or penalty: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund: *Provided, further,* That in proper cases, the Commissioner shall grant a refund for taxes or penalties within ninety (90) days from the date of complete submission of the documents in support of the application filed: *Provided, furthermore,* That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial: *Provided, finally,* That 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."

While I laud the intention to improve tax administration, this provision is administratively difficult for the Bureau of Internal Revenue (BIR) to implement and may cause delayed or erroneous processing of refund claims. The general form of tax refund under Section 204 of the Tax Code, as distinguished from VAT refunds in Section 112 of the same Code, requires a full audit of all internal revenue tax liabilities and examination of the tax payments, books, and returns filed by a taxpayer. Aside from this, the Tax Code itself requires the Commission on Audit to examine refunds. Thus, it is incumbent upon the BIR to exercise utmost diligence in granting a general tax refund. This is not possible within a 90-day period for all cases. I do not want the BIR to be forced to choose between only two (2) awful choices: grant tax refunds haphazardly, or deny an application outright considering the short period given to the BIR to process the same and then have the taxpayer go to court with his refund being unnecessarily delayed. Thus, while imposing a hard deadline may appear good on paper, the actual experience in the conduct of a full audit in general tax refund will either cause damage to the government if the BIR acts haphazardly, or cause more delays to the prejudice of the taxpayers if the BIR chooses the more convenient option of simply denying applications given the time constraints. As alternative, I suggest that the legislature, the Department of Finance, and the BIR, come up with mechanisms to streamline the process of tax refunds in a separate tax administration bill.

C. Definition of investment capital

I am constrained to veto item (g) of the new Section 293 of the Tax Code under Section 16 of this Act:

"(g) *Investment capital* refers to the value of investment indicated in Philippine currency, excluding the value of land and working capital, that shall be used to carry out a registered project or activity, except that land shall be included as investment capital for registered real estate development. Investment capital may include the cost of land improvements, buildings, leasehold improvements, machinery and equipment, and other non-current tangible assets;"

The term "investment capital" is relevant in determining which registered projects or activities shall fall within the approving jurisdiction of the Fiscal Incentives Review Board (FIRB). To ensure that currently operational administrative processes are not unduly disturbed, I prefer that we adopt the measures now used by investment

promotion agencies to determine the scale of an investment. Excluding land and operating expenses from the measure of an investment's total scale may also lead to an underestimation of our investment promotion performance.

D. Redundant incentives for domestic enterprises

I am compelled to veto portions of the new Sections 294, 295, and 296 of the Tax Code, under Section 16 of the CREATE Act, to wit:

1. The proviso in the first paragraph of Section 294 (B):

   "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,'"

2. The second paragraph in Section 294 (B):

   "The domestic market enterprise under the Strategic Investment Priority Plan engaged in activities that are classified as 'critical' shall refer to those enterprises belonging to industries identified by the National Economic and Development Authority to be crucial to national development."

3. The following provisos in the fourth paragraph of Section 294(B):

   "the national government share shall be three percent (3%) of the gross income earned effective July 1, 2020: *Provided, further*, That"

   ***Provided, finally,* That the share of the local government unit which has jurisdiction over the place of the registered activity of registered business enterprise outside ecozones and freeports shall be two percent (2%) and shall be directly remitted by the registered business enterprise to such local government units."**

4. The words **", domestic market enterprise,"** and **"critical"** on the second line of the first paragraph of Section 294 (C).

5. The proviso in the first paragraph of Section 295 (B):

   "the domestic market enterprise with a minimum investment capital of Five hundred million Pesos (P500,000,000.00), and the domestic market enterprise engaged in activities that are classified as 'critical,'"

6. The proviso in the first paragraph of **Section 296 (A):**

   "and for domestic market enterprise under the Strategic Investment Priority Plan engaged in activities that are classified as 'critical'"

7. The provisos **"not classified as critical"** and **"special corporate income tax or"** in the first paragraph of Section 296 (B).

8. The second paragraph of Section 296 (B):

"*Provided,* That only domestic market enterprise, which has an investment capital of not less than Five hundred million Pesos (P500,000,000.00), shall be eligible for the special corporate income tax rate."

9. The line **"and critical domestic market activities"** in the fourteenth paragraph of Section 296 (B).

10. All mention of **"/SCIT"** in the table after the phrase "For domestic market activities:".

The special corporate income tax (SCIT) rate for domestic market enterprises, which is in lieu of all local and national taxes, is redundant, unnecessary, and weakens the fiscal incentives system. Domestic-oriented enterprises are market-seeking enterprises or enterprises that invest in selling goods and services to a market where viable demand exists—with or without tax incentives.

Tax incentives for domestic market enterprises are only justified to the extent that they yield measurable net benefits to the economy. I find that the generous, targeted, and performance-based enhanced deductions to domestic activities in priority sectors or industries under the CREATE Act are already sufficient incentives for the purpose.

Contrary to a common misconception that denying domestic enterprises the SCIT is tantamount to abandoning our own local businesses to fend for themselves, vetoing the subject provision is actually for the benefit of all local businesses. It must be emphasized that only registered business entities are proposed to be entitled to SCIT. Thus, local and homegrown firms that are not registered firms, which make up most of our MSMEs, will have to pay more taxes than registered firms. The latter would then have more legroom to reduce prices, secure more contracts, and ultimately take over the market and put our MSMEs out of business. In actuality, this line item veto will effectively level the domestic playing field and provide only the most generous incentives during the most critical times [e.g., income tax holiday (ITH) during start-up years]. After ITH expires, performance-based incentives, specifically the enhanced deductions, will become available. All of these ensure that extended tax savings are matched with targeted spending (e.g., direct labor and research and development) and not awarded outright which is the case if SCIT is extended to them.

E. Allowing existing registered activities to apply for new incentives for the same activity

I am constrained to veto the following provisions under the new Section 296 of the Tax Code under Section 16 of this Act, to wit:

1. The lines **"a new set of"** and **"and its period of availment, granted under Sections 294 and 296 of this Act, respectively"** in the second paragraph of Section 296 (A).

2. The lines **"a new set of"** and **"and its period of availment, granted under Sections 294 and 296 of this Act, respectively"** in the third paragraph of Section 296 (B).

3. The line **"and may still be extended for a certain period not exceeding ten (10) years at any one time"** in the fourth paragraph of Section 296 (B).

Allowing an additional fourteen (14) to seventeen (17) years of incentives and another ten (10) year-extension for the same activity on top of the original period of incentives enjoyment is fiscally irresponsible and utterly unfair to the ordinary taxpayer and to unincentivized enterprises. Registered business enterprises interested in further enjoying incentives must engage in new activities or projects incentivized in the Strategic Investment Priority Plan. My principle on this matter is simple: only new activities and projects deserve new incentives.

F. Limitations on the power of the FIRB

I am constrained to veto the proviso under the new Section 297 of the Tax Code under Section 16 of this Act, to wit:

> **"The functions of the Fiscal Incentives Review Board under Sections 297 (A) (1) and (5), (E), (G), (H), (J), and (K) shall be exercised in relation to the grant of tax incentives to registered projects or activities with the total investment capital of more than One billion Pesos (P1,000,000,000.00) as provided herein."**

The primary role of the FIRB in the fiscal incentives system of the Philippines is to exercise policy-making and oversight functions on all registered business enterprises and investment promotion agencies. Section 297 (B) is clear that the power of the investment promotion agencies to grant incentives only stems from a delegated authority from the FIRB.

Corollary to this, the current practice of granting incentives without a regular impact analysis conducted and without regard to the final cost to the government is unacceptable, given our economic aims under the CREATE Act. Consistent with the theme of the "Tax Incentives Management and Transparency Act (TIMTA)" emphasizing fiscal accountability and transparency in the grant and management of tax incentives, the oversight functions of the FIRB will ensure the proper grant and monitoring of tax incentives, as well as assure Filipinos that in every peso invested, we get our tax's worth. These powers must remain plenary over those of the investment promotion agencies.

The concern that the FIRB oversight will result in inordinate delays is highly speculative. Even with the veto of the foregoing provision, the investment promotion agencies retain the delegated power to grant incentives up to a certain threshold amount. The FIRB does not create another layer in the approval process but is simply granted the authority to check whether the incentives granted by the investment promotion agencies conform to the overarching aim of the reform to modernize our incentive system into one that is performance-based, targeted, time-bound, and transparent. The oversight power of the FIRB supports its policy-making function since analyzing important data on all granted incentives is crucial in crafting sound, sustainable, and fiscally responsible incentives policy.

G. Specific industries mentioned under activity tiers

I am compelled to veto the provisions in the new Section 296 (B) of the Tax Code, under Section 16 of this Act, to wit:

1. The ninth paragraph of Section 296 (B)

   "These activities shall include agriculture, fishing, forestry, and agribusiness activities, including handicrafts intended for export, and energy; ecozone and freeport zone development; manufacturing of medical supplies, devices and equipment, and construction of healthcare facilities; facilities for environmentally-sustainable disposal of waste; infrastructure; manufacturing and service industries that are emerging resulting from innovation, upgrading or addressing gaps in the supply and value chain; mass housing, as well as infrastructure, transportation, utilities, logistics and support services; the provision of cybersecurity services; and planned developments that use technologies and digital solutions that are crucial to the country's development;"

2. The twelfth paragraph of Section 296 (B)

   "These activities shall include agriculture, fishing, forestry, agribusiness, and other activities and services that indispensably require the employment of knowledge processing, modern science; data analytics; creative content; engineering; state of the art technologies; technologies that are available in other countries but are not yet available or widely used in the Philippines; and research and development in the process of production of goods and services, resulting in demonstrably significant value-added, productivity, efficiency, breakthroughs in science and health, and high-paying jobs and manufacturing of FDA-approved investigational drugs, medicines and medical devices."

On the one hand, there are industries in the enumeration that either do not merit support through incentives or are expected to become obsolete in the short-term. On the other hand, there might be economic activities in the mid- to long-term that need to be prioritized and granted tax incentives which are not captured in the current enumeration. The CREATE Act must be kept flexible to be able to keep up with the changing times. Activities and projects should not be hard coded in the law so that we do not keep on incentivizing obsolete industries and close our doors to technological advances and industries of the future.

H. Provision granting the President the power to exempt any investment promotion agency from the reform

I am constrained to veto the following provisions under new Section 301 of the Tax Code under Section 16 of this Act:

> **"The President may, upon request of an Investment Promotion Agency, exempt the latter from the coverage of the provisions of Title XIII of this Code with respect to the review and approval of applications for incentives, or modify the policy on thresholds for Fiscal Incentives Review Board approvals, pursuant to Section 297, should any of the following conditions exist:**

(a) When incentives system provided herein cause a significant, demonstrable, and attributable damage to the performance of an Investment Promotion Agency;

(b) When it is reasonably evident that the incentives granted are no longer adequate, necessary, or appropriate;

(c) When there is need to modify incentive privileges in the light of technological, economic, and social changes; or

(d) When there is need to redesign the tax incentive schemes to obviate unemployment and avoid economic and social dislocation:

"*Provided*, That the abovementioned request is approved by a majority vote of its governing board:

"*Provided, further*, That such request is supported by a cost-benefit analysis reviewed by the Fiscal Incentives Review Board, and other quantitative and qualitative evidence demonstrating the Investment Promotion Agency's performance.

"*Provided, finally*, That the Investment Promotion Agency shall abide by the incentives regime provided herein:"

The provisions allowing any future President the power to exempt an investment promotion agency from the coverage of the CREATE Act disregards the huge steps we have taken to rationalize our fiscal incentives system. It could become a highly political tool that could allow subsequent Presidents to dismantle decades of studies, disregard discussions based on empirical evidence, and even subvert the will of Congress itself. Fair and sensible public policy must bear the quality of uniform application. Exempting any investment promotion agency from the CREATE Act, which provides for transparency, accountability, and proper administration of tax incentives may be used as an escape from the accountability measures institutionalized in that law, and opens a wide path for discretion and capture by vested interests.

I. Automatic approval of applications for incentives

I am constrained to veto the proviso under the new Section 297 (B) of the Tax Code, to wit:

***"Provided, finally,* that the application for tax incentives shall be deemed approved if not acted upon within twenty (20) days from the date of submission of the application and complete relevant supporting documents to the Fiscal Incentives Review Board or the Investment Promotion Agency, as the case may be."**

The automatic approval of applications runs counter to the declared policy to approve or disapprove applications based on merit. The core of the reform is to develop a performance-based tax incentives system. The FIRB or the investment promotion agencies, as the case may be, should be allowed to carefully review the application for tax incentives since these are privileges granted by the State. This important function should not be sacrificed for the sake of expediency.

Moreover, concerns over inaction can be addressed by the Ease of Doing Business and Efficient Government Service Delivery Act of 2018, which punishes the failure to render government services within a prescribed time.

III. CLOSING STATEMENT

Crucial portions of the CREATE Act were intended to be emergency tax relief for struggling enterprises, but we must not lose sight of this reform's long-term objectives. As fiscal resources will be much needed for the government's economic recovery efforts, we must keep this reform's provisions reasonable and not redundant.

The CREATE Act will be the guiding document for much of Philippine business and industry over the next decades. With over P600 billion in tax relief for job creation in the next five years, we lay our faith and invest in Filipino businesses for them to reinvigorate the economy, create more quality jobs, and generate more revenues for the government to tide us along these trying times.

Very truly yours,

Copy furnished:

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