

**NINETEENTH CONGRESS OF THE )  
REPUBLIC OF THE PHILIPPINES )  
First Regular Session )**



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**S E N A T E**

RECEIVED BY:

**P. S. Resolution No. 567**

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Introduced by **Senator Win Gatchalian**

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**RESOLUTION**

**DIRECTING THE COMMITTEE ON WAYS AND MEANS TO CONDUCT AN INQUIRY IN AID OF LEGISLATION ON THE APPARENT INCONSISTENCY BETWEEN THE PROVISION OF THE CREATE LAW GRANTING INCENTIVES TO REGISTERED BUSINESS ENTERPRISES VIS-A-VIS ITS IMPLEMENTING RULES AND REGULATIONS, AND OTHER ISSUANCES ISSUED IN RELATION THERETO**

**WHEREAS**, Republic Act No. 11534 otherwise known as the "Corporate Recovery and Tax Incentives for Enterprises" (CREATE) Act was approved and passed into law on March 26, 2021;

**WHEREAS**, it is the declared objectives of the CREATE Act to develop a more responsive and globally-competitive tax incentives regime that is performance-based, targeted, time-bound, and transparent. Furthermore, the CREATE act seeks to create a more equitable tax incentive system that will allow for inclusive growth and generation of jobs and opportunities in all the regions of the country, and ensure access and ease in the grant of these incentives especially for applicants in least developed areas.

**WHEREAS**, Section 294, par. (E) of the National Internal Revenue Code, as amended by CREATE Act (NIRC) provides for **Value-Added Tax (VAT) exemption on importation and VAT zero-rating on local purchases** as one of the incentives given under the CREATE Act. In furtherance thereto, Section 295 (d) provides that the

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 a **registered business enterprise**;

**WHEREAS**, Section 293 of the NIRC defines RBE as "any individual, partnership, corporation, Philippine branch of a foreign corporation, or other entity organized and existing under Philippine laws and registered with an Investment Promotion Agency excluding service enterprises such as those engaged in customs brokerage, trucking or forwarding services, janitorial services, security services, insurance, banking, and other financial services, consumers' cooperatives, credit unions, consultancy services, retail enterprises, restaurants, or such other similar services, as may be determined by the Fiscal Incentives Review Board, irrespective of location, whether inside or outside the zones, duly accredited or licensed by any of the Investment Promotion Agencies and whose income delivered within the economic zones shall be subject to taxes under the National Internal Revenue Code of 1997, as amended";

**WHEREAS**, an RBE can be classified as a domestic market enterprise (DME), or export enterprise. Section 293 par. (D) defines a DME as "any enterprise registered with the Investment Promotion Agency other than export enterprise" while Section 293, par. (E) defines an export enterprise as "any individual, partnership, corporation, Philippine branch of a foreign corporation, or other entity organized and existing under Philippine laws and registered with the Investment Promotion Agency to engage in manufacturing, assembling or processing activity, and services such as information technology (IT) activities and business process outsourcing (BPO), and resulting in the direct exportation, and/or sale of its manufactured, assembled or processed product or IT/BPO services to another registered export enterprise that will form part of the final export product or export service of the latter, of at least seventy percent (70%) of its total production or output";

**WHEREAS**, Section 5, Rule 2 of the CREATE Act IRR states that the 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 of a registered export enterprise, to wit:

"SECTION 5. Value-Added Tax (VAT) zero-rating and exemption. — **The 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 of a registered export enterprise**, for a maximum period of seventeen (17) years from the date of registration, unless otherwise extended under the SIPP.

The direct and exclusive use for the registered project or activity refers to raw materials, inventories, supplies, equipment, goods, packaging materials, services, including provision of basic infrastructure, utilities, and maintenance, repair and overhaul of equipment, and other expenditures directly attributable to the registered project or activity without which the registered project or activity cannot be carried out; *Provided*, That the VAT zero-rating on local purchases shall be granted upon the endorsement of the concerned IPA, in addition to the documentary requirements of the BIR." [Emphasis and underscoring supplied]

**WHEREAS**, following the above-quoted Section 5, Rule 2 of the CREATE Act IRR, the Bureau of Internal Revenue (BIR) issued BIR Revenue Regulations No. 21-2021. The said BIR issuance provides that sale of goods and services to a **registered export enterprise**, to be used directly and exclusively in its registered project or activity pursuant to Sections 294 (E) and 295 (D) of CREATE Act, and Section 5, Rule 2 of its IRR, shall be subject to VAT zero-rating;

**WHEREAS**, under BIR Revenue Memorandum Circular No. 24-2022 dated March 09, 2022, the BIR further clarified that with the CREATE Act already in place,

business enterprises duly registered with the concerned Investment Promotion Agency pursuant to the CREATE Act shall only be accorded VAT zero-rating on their local purchases of goods and/or services that are directly and exclusively used in the registered project or activity of the **registered export enterprises**.

**WHEREAS**, based on the foregoing, it is clear that the VAT exemption and VAT zero-rating granted to RBEs under the CREATE Act, without distinction whether the RBE is classified as an export enterprise and a DME, is not being faithfully implemented by the BIR;

**WHEREAS**, because of the erroneous interpretation of the CREATE Act by its IRR and by the BIR, RBEs that are classified as DMEs are not being able to avail of VAT exemption and VAT zero-rating that are granted by the CREATE Act;

**NOW, THEREFORE**, be it resolved, as it is hereby resolved, to direct the Senate Committee on Ways and Means to conduct an inquiry, on the imposition of VAT on importations and local purchases of goods and services directly and exclusively used in the registered project or activity of RBEs classified as DMEs, with an end view of identifying the inconsistencies between the CREATE Act and its IRR.

***Adopted,***



**WIN GATCHALIAN**  
Senator