



**AMCHAM  
PHILIPPINES**

AMERICAN



AUSTRALIAN-NEW ZEALAND



CANADIAN



EUROPEAN



JAPANESE



KOREAN



PAMURI



IBPAP

June 21, 2024

**Hon. Win Gatchalian**

Chair, Committee on Ways and Means

Senate of the Philippines

Rooms 512 & 22 (Extension)

GSIS Bldg., Financial Center, Diokno Blvd.

Pasay City

Dear Senator Gatchalian:

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 the latest Senate version of the CREATE MORE (as of June 13) bill or "An Act amending Sections 27, 28, 32, 57, 106, 108, 112, 292, 293, 294, 295, 296, 297, 300, 301, 309, 310, and 311, and adding a new Section 295-A and 296-A in the National Internal Revenue Code of 1997, as amended, and for other purposes."

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 the bill's intention to establish a simplified VAT refund system and clarify the VAT regime for registered businesses, among others.

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:

#### 1. Section 10 amending Section 294 of the NIRC

**"(F) REGISTERED BUSINESS ENTERPRISE LOCAL TAX. – IN LIEU OF ALL LOCAL TAXES, FEES, AND CHARGES IMPOSED BY THE LOCAL GOVERNMENT UNIT, THERE SHALL BE IMPOSED ON A REGISTERED BUSINESS ENTERPRISE THAT IS UNDER THE ENHANCED DEDUCTIONS REGIME, LOCAL BUSINESS TAX AT THE RATE [OF TWO] NOT EXCEEDING ONE PERCENT ([2]-1%) OF GROSS SALES FOR THOSE BELONGING TO THE MANUFACTURING INDUSTRY AND**



**AMCHAM**  
**PHILIPPINES**

AMERICAN



AUSTRALIAN-NEW ZEALAND



CANADIAN



EUROPEAN



JAPANESE



KOREAN



PAMURI



IBPAP

**NOT EXCEEDING ONE-HALF PERCENT (.5%) FOR THOSE BELONGING TO THE SERVICE INDUSTRY. [BASED ON GROSS INCOME FOR REGISTERED BUSINESS ENTERPRISES DURING THE INCOME TAX HOLIDAY AND ENHANCED DEDUCTION PERIOD AS PROVIDED UNDER SECTION 295(A) AND (B) OF THIS CODE, RESPECTIVELY, WHICH SHALL BE IN LIEU OF ALL LOCAL TAXES, FEES, AND CHARGES IMPOSED BY THE LOCAL GOVERNMENT UNIT: PROVIDED, THAT THE REGISTERED BUSINESS ENTERPRISE LOCAL TAX SHALL NOT INCLUDE REAL PROPERTY TAX ON LAND OWNED BY DEVELOPERS.] THE SAID LOCAL TAX SHALL BE IN LIEU OF LOCAL BUSINESS TAX, FEES, CHARGES, AND REAL PROPERTY TAXES EXCEPT ON PROPERTY OWNED BY DEVELOPERS, AMONG OTHERS. RBES AVAILING OF EITHER THE INCOME TAX HOLIDAY OR THE SCIT SHALL NOT BE LIABLE FOR LOCAL BUSINESS TAX, FEES, CHARGES AND REAL PROPERTY TAXES EXCEPT ON PROPERTY OWNED BY DEVELOPERS.**

**Rationale:** This will put certainty to the amount of local business tax that RBES should pay and when they should be liable for it.

## 2. Section 11 amending Section 295 of the NIRC

"xxx

"(C) The duty exemption shall only apply to the importation of capital equipment, raw materials, spare parts, or accessories **[directly]** ~~[and exclusively used in]~~ **ATTRIBUTABLE TO** the registered project or activity by registered business enterprises: *Provided*, That the following conditions are complied with:

"xxx

"(D) The VAT exemption on importation and VAT zero-rating on local purchases ~~[shall only apply to]~~ **OF** goods and services ~~[directly and exclusively used in]~~ **[DIRECTLY] ATTRIBUTABLE TO** the registered project or activity ~~[by]~~ **OF** a registered business enterprise **IT SHALL BE SUBJECT TO THE FOLLOWING CONDITIONS:"**

**"RBES SHALL NOT BE REQUIRED TO SECURE APPROVAL FOR VAT ZERO-RATING ON THEIR LOCAL PURCHASES AND IMPORTATION THAT ARE RELATED OR ATTRIBUTABLE TO THEIR REGISTERED ACTIVITY.**

"xxx



**AMCHAM**  
**PHILIPPINES**

AMERICAN



AUSTRALIAN-NEW ZEALAND



CANADIAN



EUROPEAN



JAPANESE



KOREAN



PAMURI



IBPAP

"Notwithstanding the provisions in the preceding paragraphs, sales receipts and other income derived from non-registered project or activity shall be subject to appropriate taxes imposed under this Code.

**~~[(H) THE REGISTERED BUSINESS ENTERPRISE LOCAL TAX SHALL BE IMPOSED ON A REGISTERED BUSINESS ENTERPRISE FOR AS LONG AS IT MEETS THE CONDITIONS FOR ITS REGISTRATION, DURING THE PERIOD OF AVAILMENT OF THE INCOME TAX HOLIDAY AND THE EDR.]~~**

"Registered business enterprises, whose performance commitments include job generation, shall maintain their employment levels to the extent practicable, and in the case of reduced employment or when the performance commitment for job generation is not met, the registered business enterprises must submit to their respective Investment Promotion Agencies and the Fiscal Incentives Review Board their justificationS for the same."

#### **Rationale:**

We suggest to delete "directly" in section D as the same may again be interpreted differently in administrative issuances and retaining "attributable" suffices to meet the intent of the law. We also suggest that rules on whether the purchases of goods and services are attributable to the registered project or activity and if conditions are complied with be issued and administered by appropriate IPAs to avoid recurrence of issues brought about by BIR issuances.

### **3. Additional Proviso for Section 229 of the NIRC**

**"SEC. 229. Recovery of Tax Erroneously or Illegally Collected**

XXX

**PROVIDED, HOWEVER, THAT FAILURE ON THE PART OF ANY OFFICIAL, OR EMPLOYEE OF THE BIR TO ACT ON THE APPLICATION WITHIN THE ONE HUNDRED EIGHTY (180)-DAY PERIOD SHALL BE PUNISHABLE UNDER SECTION 269 OF THIS CODE."**

#### **Rationale:**

We are recommending that the provision above be added to Section 229, similar to the provisions of claims for refund of unutilized input VAT under Section 112 (C) where penalty is imposed for failure by the BIR to act within the timeline provided.



**AMCHAM**  
**PHILIPPINES**

AMERICAN



AUSTRALIAN-NEW ZEALAND



CANADIAN



EUROPEAN



JAPANESE



KOREAN



PAMURI



IBPAP

We note that the processing of claims for refund of other types of taxes in the Philippines takes the longest among the ASEAN countries, usually, averaging 4 years.

#### 4. Section 18 amending Section 309 of the NIRC.

SEC. 309. Prohibition on Registered Activities. – **EXCEPT AS ALLOWED UNDER THIS PROVISION, [A] 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, OR WITHIN THE REGISTERED PLACE OF BUSINESS OF THE QUALIFIED PROJECT OR ACTIVITY FOR THOSE LOCATED OUTSIDE ECONOMIC ZONES OR FREEPORTS: Provided, That a registered business enterprise may conduct or operate more than one qualified registered project or activity 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, UNLESS OTHERWISE AUTHORIZED HEREIN,** 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.~~] **PROVIDED, FURTHERMORE, THAT REGISTERED BUSINESS ENTERPRISES IN THE INFORMATION TECHNOLOGY – BUSINESS PROCESS OUTSOURCING SECTOR OR OTHER SIMILAR SECTORS MAY BE ALLOWED TO INSTITUTE A “TELECOMMUTING” PROGRAM AS DEFINED UNDER REPUBLIC ACT NO. 11165, OTHERWISE KNOWN AS “THE TELECOMMUTING ACT,” INCLUDING WORK-FROM-HOME ARRANGEMENTS: [PROVIDED, FINALLY, THAT DOUBLE REGISTRATION FOR PURPOSES OF AVAILING OTHER INCENTIVES UNDER SPECIAL LAWS SHALL NOT BE ALLOWED.”] OR OTHER ALTERNATIVE WORK ARRANGEMENTS: PROVIDED, FINALLY, THAT DOUBLE REGISTRATION FOR PURPOSES OF AVAILING OTHER INCENTIVES UNDER SPECIAL LAWS SHALL NOT BE ALLOWED.”**

**Rationale:** We need to recognize the reality that after the pandemic, the younger workforce would like to have the flexibility to be able to work remotely. We recommend the addition of “UNLESS OTHERWISE AUTHORIZED HEREIN” to make clear that services performed outside zones and freeports pursuant to the allowable telecommuting arrangements would still be entitled to incentives. Further, we also recommend the insertion of “OR OTHER ALTERNATIVE WORK” to accommodate the evolving alternative work arrangements.



**AMCHAM  
PHILIPPINES**

AMERICAN



AUSTRALIAN-NEW ZEALAND



CANADIAN



EUROPEAN



JAPANESE



KOREAN



PAMURI



IBPAP

Sincerely,

**EBB HINCHLIFFE**

Executive Director  
American Chamber of  
Commerce of the Philippines,  
Inc.

**JULIAN PAYNE**

President  
Canadian Chamber of  
Commerce of the Philippines,  
Inc.

**PAULO DUARTE**

President  
European Chamber of  
Commerce  
of the Philippines

**HARUTAKA ISHIKAWA**

President  
Japanese Chamber of Commerce  
and Industry of the Philippines,  
Inc.

**HYUN CHONG UM**

President  
Korean Chamber of Commerce  
of the Philippines, Inc.

**ATTY. MIMI LOPEZ-MALVAR**

Director  
Philippine Association of  
Multinational Companies  
Regional Headquarters, Inc.

**JACK MADRID**

President & CEO  
IT and Business Process  
Association of the Philippines