

[**REPUBLIC ACT NO. 11534, March 26, 2021**]

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

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Short Title. — This Act shall be known as the "Corporate Recovery and Tax Incentives for Enterprises Act" or "CREATE".

SEC. 2. Declaration of Policy. — It is hereby declared the policy of the State to develop the national economy towards global competitiveness by implementing tax policies instrumental in attracting investments, which will result in productivity enhancement, employment generation, countrywide development, and a more inclusive economic growth, while at the same time maintaining fiscal prudence and stability.

To achieve these objectives, the State shall:

(a) Improve the equity and efficiency of the corporate tax system by lowering the rate, widening the tax base, and reducing tax distortions and leakages;

(b) Develop, subject to the provisions of this Act, a more responsive and globally competitive tax incentives regime that is performance-based, targeted, time-bound, and transparent;

(c) Provide support to business in their recovery from unforeseen events such as an outbreak of communicable diseases or a global pandemic, and strengthen the nation's capability for similar circumstances in the future; and

(d) 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.

SEC. 3. Section 20 of the National Internal Revenue Code of 1997, as follows:

"SEC. 20. *Submission of Report and Pertinent Information by the Commissioner.* -

"(A) x x x

"(B) *Submission of Tax-Related Information to the Department of Finance.* - The Commissioner shall, upon the order of the Secretary of Finance specifically identifying the needed information and justification for such order in relation to the grant of incentives under Title XIII, furnish the Secretary pertinent information on the entities receiving incentives under this Code: *Provided, however,* That the Secretary and the relevant officers handling such specific information shall be covered by the provisions of Section 270 unless the taxpayer consents in writing to such disclosure.

"(C) *Report to Oversight Committee.* - The Commissioner shall, with reference to Section 204 of this Code, submit to the Oversight Committee referred to in Section 290 hereof, through the Chairpersons of the Committees on Ways and Means of the Senate and House of Representatives, a report on the exercise of his powers pursuant to the said Section, every six (6) months of each calendar year."

SEC. 4. Section 22 of the National Internal Revenue Code of 1997, as amended, is hereby further amended to read as follows:

"SEC. 22. *Definitions.* - x x x

"(A) x x x

"(B) 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 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.

"x x x."

SEC. 5. Section 25 of the National Internal Revenue Code of 1997, as amended, is hereby further amended to read as follows:

"SEC. 25. *Tax on Nonresident Alien Individual.* -

"(A) x x x

"(1) x x x

"(2) *Cash and/or Property Dividends from a Domestic Corporation or Joint Stock Company, or Insurance or Mutual Fund Company or Regional Operating Headquarter or Multinational Company, or Share in the Distributable Net Income of a Partnership (Except a General Professional Partnership), Joint Account, Joint Venture Taxable as a Corporation or Association, Interests, Royalties, Prizes, and Other Winnings.* - Cash and/or property dividends from a domestic corporation, or from a joint stock company, or from an insurance or mutual fund company or from a regional operating headquarter of multinational company, or the share of a nonresident alien individual in the distributable net income after tax of a partnership (except a general professional partnership) of which he is a partner, or the share of a nonresident alien individual in the net income after tax of an association, a joint account, or a joint venture taxable as a corporation of which he is a member or a co-venturer; interests; royalties (in any form); and prizes (except prizes amounting to Ten thousand pesos (P10,000.00) or less which shall be subject to tax under Subsection (B)(1) of Section 24) and other winnings (except winnings amounting to Ten thousand pesos (P10,000.00) or less from Philippine Charity Sweepstakes Office (PCSO) games which shall be exempt); shall be subject to an income tax of twenty percent (20%) on the total amount thereof: Provided, however, That royalties on books as well as other literary works, and royalties on musical compositions shall be subject to a final tax of ten percent (10%) on the total amount thereof: Provided, further, That cinematographic films and similar works shall be subject to the tax provided under Section 28 of this Code: Provided, furthermore, That interest income from long-term deposit or investment in the form of savings, common or individual trust funds, deposit substitutes, investment management accounts and other investments evidenced by certificates in such form prescribed by the Bangko Sentral ng Pilipinas (BSP) shall be exempt from the tax imposed under this Subsection: Provided, finally, That should the holder of the certificate pre-terminate the deposit or investment before the fifth (5th) year, a final tax shall be imposed on the entire income and shall be deducted and withheld by the depository bank from the proceeds of the long-term deposit or investment certificate based on the remaining maturity thereof:

"Four (4) years to less than five (5) years - 5%;

"Three (3) years to less than four (4) years - 12%;

"Less than three (3) years - 20%.

"(3) x x x."

SEC. 6. Section 27 of the National Internal Revenue Code of 1997, as amended, is hereby further amended to read as follows:

"SEC. 27. *Rates of Income Tax on Domestic Corporations.* -

"(A) In General, — Except as otherwise provided in this Code, an income tax rate of twenty-five percent (25%) effective July 1, 2020, is hereby imposed upon the taxable income derived during each taxable year from all sources within and without the Philippines by every corporation, as defined in Section 22(B) of this Code and taxable under this Title as a corporation, organized in, or under the laws of the Philippines.

"*Provided*, That corporations with net taxable income not exceeding Five million pesos and with total assets not exceeding One hundred million pesos (P 100,000,000.00), excluding land on which the particular business entity's office, plant, and equipment are situated during the taxable year for which the tax is imposed, shall be taxed at twenty percent (20%).

"In the case of corporations adopting the fiscal-year accounting period, the taxable income shall be computed without regard to the specific date when specific sales, purchases and other transactions occur. Their income and expenses for the fiscal year shall be deemed to have been earned and spent equally for each month of the period.

"The corporate income tax rate shall be applied on the amount computed by multiplying the number of months covered by the new rate within the fiscal year by the taxable income of the corporations for the period, divided by twelve.

"(B) *Proprietary Educational Institutions and Hospitals.* - Proprietary educational institutions and hospitals which are nonprofit shall pay a tax of ten percent (10%) on their taxable income except those covered by Subsection (D) hereof: *Provided*, That beginning July 1, 2020 until June 30, 2023, the tax rate herein imposed shall be one percent (1%): *Provided, further*, That if the gross income from 'unrelated trade, business or other activity' exceeds fifty percent (50%) of the total gross income derived by such educational or hospitals from all sources, the tax prescribed in Subsection (A) hereof shall be imposed on the net taxable income. For purposes of this Subsection, the term 'unrelated trade, business or other activity' means any trade, business or other activity, the conduct of which is not substantially related to the exercise or performance by such educational institution or hospital of its primary purpose or function. 'Proprietary' means a private hospital, or any private school maintained and administered by private individuals or groups with an issued permit to operate from the Department of Education (DepEd), or the Commission on Higher Education (CHED), or the Technical Education and Skills Development Authority (TESDA), as the case may be, in accordance with existing laws and regulations.

"(C) *Government-owned or -Controlled Corporations, Agencies or Instrumentalities.* - The provisions of existing special or general laws to the contrary notwithstanding, all corporations, agencies, or owned or controlled by the Government, except the Government Service Insurance System (GSIS), the Social Security System (SSS), the Home Development Mutual Fund (HDMF), the Philippine Health Insurance Corporation (PHIC), and the local water districts shall pay such rate of tax upon their taxable income as are imposed by this Section upon corporations or associations engaged in a similar business, industry, or activity.

"(D) *Rates of Tax on Certain Passive Incomes.* - x x x

"x x x

"(4) *Intercorporate Dividends.* - Dividends received by a domestic corporation shall not be subject to tax under this Title: *Provided*, That for foreign-sourced dividends to be exempt, the funds from such dividends actually received or remitted into the Philippines are reinvested in the 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 project: *Provided, further*, That the domestic corporation holds directly at least twenty percent (20%) of the outstanding shares of the foreign corporation and has held the shareholdings for a minimum of two (2) years at the time of the dividends distribution.

"(E) *Minimum Corporate Income Tax on Domestic Corporations.*

"(1) *Imposition of Tax.* — A minimum corporate income tax of two percent (2%) of the gross income as of the end of the taxable year, as defined herein, is hereby imposed on a corporation taxable under this Title, beginning on the fourth taxable year immediately following the year in which such

corporation commenced its business operations, when the minimum income tax is greater than the tax computed under Subsection (A) of this Section for the taxable year: Provided, That effective July 1, 2020 until June 30, 2023, the rate shall be one percent (1%).

"(2) x x x

"(3) x x x

"(4) x x x."

SEC. 7. Section 28 of the National Internal Revenue Code of 1997, as amended, is hereby further amended to read as follows:

"SEC. 28. *Rates of Income Tax on Foreign Corporations.* -

"(1) *In General.* — Except as otherwise provided in this Code, a corporation organized, authorized, or existing under the laws of any foreign country, engaged in trade or business within the Philippines, shall be subject to an income tax equivalent to twenty-five percent (25%) of the taxable income derived in the preceding taxable year from all sources within the Philippines effective July 1, 2020.

"In the case of corporations adopting the fiscal-year accounting period, the taxable income shall be computed without regard to the specific date when sales, purchases and other transactions occur. Their income and expenses for the fiscal year shall be deemed to have been earned and spent equally for each month of the period.

"The corporate income tax rate shall be applied on the amount computed by multiplying the number of months covered by the new rate within the fiscal year by the taxable income of the corporation for the period, divided by twelve.

"(2) *Minimum Corporate Income Tax of Resident Foreign Corporations.* — A minimum corporate income tax of two percent (2%) of gross income, as prescribed under Section 27(E) of this Code, shall be imposed, under the same conditions, on a resident foreign corporation taxable under paragraph (1) of this Subsection: Provided, That effective July 1, 2020 until June 30, 2023, the rate shall be one percent (1%).

"(3) x x x

"(4) *Tax on Branch Profits Remittances.* - x x x

"(5) *Regional or Area Headquarters and Regional Operating Headquarters of Multinational Companies.* -

"(a) Regional or area headquarters as defined in Section 22 (DD) shall not be subject to income tax.

"(b) Regional operating headquarters as defined in Section 22 (EE) shall pay a tax of ten percent (10%) of their taxable income: *Provided,* That effective January 1, 2022, regional operating headquarters shall be subject to the regular corporate income tax.

"(6) *Tax on Certain Incomes Received by a Resident Foreign Corporation.* -

"(a) *Interest from Deposits and Yield or any other Monetary Benefit from Deposit Substitutes, Trust Funds and Similar Arrangements and Royalties.* — Interest from any currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements and royalties derived from sources within the Philippines shall be subject to a final income tax at the rate of twenty percent (20%) of such interest: *Provided,* however, That interest income derived by a resident foreign corporation from a depository bank under the expanded foreign currency deposit system shall be subject to a final income tax at the rate of fifteen percent (15%) of such interest income.

"(b) *Income Derived under the Expanded Foreign Currency Deposit System.* - x x x

"(c) *Capital Gains from Sale of Shares of Stock Not Traded in the Stock Exchange.* — A final tax at the rate of fifteen percent (15%) is hereby imposed upon the net capital gains realized during the taxable year from the sale, barter, exchange or other disposition of shares of stock in a domestic corporation except shares sold or disposed of through the stock exchange.

"(d) *Intercorporate Dividends.* - x x x

"(B) *Tax on Nonresident Foreign Corporation.* -

"(1) *In General.* — Except as otherwise provided in this Code, a foreign corporation not engaged in trade or business in the Philippines, effective January 1, 2021, shall pay a tax equal to twenty-five percent (25%) of the gross income received during each taxable year from all sources within the Philippines, such as interests, dividends, rents, royalties, salaries, premiums (except reinsurance premiums), annuities, emoluments or other fixed or determinable annual, periodic or casual gains, profits and income, and capital gains, except capital gains subject to tax under subparagraph 5(c).

"(2) x x x

"(3) x x x

"(4) x x x

"(5) *Tax on Certain Incomes Received by a Nonresident Foreign Corporation.* -

"(a) *Interest on Foreign Loans.* - x x x

"(b) *Intercorporate Dividends.* - A final withholding tax at the rate of fifteen percent (15%) is hereby imposed on the amount of cash and/or property dividends received from a domestic corporation, which shall be collected and paid as provided in Section 57(A) of this Code, subject to the condition that the country in which the nonresident foreign corporation is domiciled, shall allow a credit against the tax due from the nonresident foreign corporation taxes deemed to have been paid in the Philippines equivalent to fifteen percent (15%), which represents the difference between the regular income tax and the fifteen percent (15%) tax on dividends as provided in this subparagraph: *Provided,* That effective July 1, 2020, the credit against the

tax due shall be equivalent to the difference between the regular income tax rate provided in Section 28(B)(1) of this Code and the fifteen percent (15%) tax on dividends;

"(c) *Capital Gains from Sale of Shares of Stock Not Traded in the Stock Exchange.* — A final senior high schools, public higher education tax at the rate of fifteen percent (15%) is hereby imposed upon the net capital gains realized during the taxable year from the sale, barter, exchange or other disposition of shares of stock in a domestic corporation, except shares sold, or disposed of the stock exchange."

SEC. 8. Section 29 of the National Internal Revenue Code of 1997, as amended, on the imposition of improperly accumulated earnings tax, is hereby repealed.

SEC. 9. Section 34 of the National Internal Revenue Code of 1997, as amended, is hereby further amended to read as follows:

"SEC. 34. *Deductions from Gross Income.* - Except for taxpayers earning compensation income arising from personal services rendered under an employer-employee relationship where no deductions shall be allowed under this Section, in computing taxable income subject to income tax under Sections 24(A); 25(A); 26; 27(A), (B), and (C); and 28(A)(I), there shall be allowed the following deductions from gross income:

"(A) *Expenses.* -

"(1) *Ordinary and Necessary trade, Business or Professional Expenses.* -

"(a) x x x

"(i) x x x

"x x x

"(v) An additional deduction from taxable income of one-half (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 institutions, or public technical and vocational institutions and duly covered by an apprenticeship agreement under Presidential Decree No. 442, series of 1974, or the 'Labor Code of the Philippines', as amended, shall be granted to enterprises: *Provided, further*; That for the additional deduction for enterprise-based training of students from public educational institutions, the enterprise shall secure proper certification from the DepEd, TESDA, or CHED: *Provided, finally*; That such deduction shall not exceed ten percent (10%) of direct labor wage.

"(B) *Interest.* -

"(1) *In General.* - The amount of interest paid or incurred within a taxable year on indebtedness in connection with the taxpayer's profession, trade or business shall be allowed as deduction from gross income: *Provided, however*; That the taxpayer's otherwise allowable deduction for interest expense shall be reduced by twenty percent (20%) of the interest income subjected to final tax: *Provided, finally*; That if the interest income tax is adjusted in the future, the interest expense reduction rate shall be adjusted accordingly based on the prescribed standard formula as defined in the rules and regulations to be promulgated by the Secretary of Finance, upon the recommendation of the Commissioner of Internal Revenue.

"(2) x x x

"(C) *Taxes.* - x x x

"(D) *Losses.* - x x x

"(E) *Bad debts.* - x x x

"(F) *Depreciation.* - x x x

"(G) *Depletion of Oil and Gas Wells and Mines.* - x x x

"(H) *Charitable and Other Contributions.* - x x x

"(I) *Research and Development.* - x x x

"(J) *Pension Trusts.* - x x x

"(K) *Additional Requirements for Deductibility of Certain Payments.* - x x x

"(L) *Optional Standard Deduction (OSD).* - x x x."

SEC. 10. Section 40(C)(2) of the National Internal Revenue Code of 1997, as amended, is hereby further amended to read as follows:

"SEC. 40. *Determination of Amount and Recognition of Gain or Loss.* -

"(A) x x x

"(B) x x x

"(C) *Exchange of Property.* - x x x

"(1) *General Rule.* - x x x

"(2) *Exception.* - No gain or loss shall be recognized on a corporation or on its stocks 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 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

"(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

"(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 arrangement 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 business with the same assets and the same stakeholders 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 control of said corporation: *Provided*, That stocks issued for services shall not be considered as issued in return for property.

"Sale or exchange 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 shall not be required for purposes of availing the tax exemption.

"x x x

"(6) Definitions. -

"(a) x x x

"(b) x x x

"(c) The term 'control', when used in this Section, shall mean ownership of stocks in a corporation after the transfer of property possessing at least fifty-one percent (51%) of the total voting power of all classes of stocks entitled to vote: *Provided*, That the collective and not the individual ownership of all classes of stocks entitled to vote of the transferor or transferors under this Section shall be used in determining the presence of control.

"x x x.

SEC. 11. Section 57 of the National Internal Revenue Code of 1997, as amended, is hereby further amended to read as follows:

"SEC. 57. *Withholding of Tax at Source*. -

"(A) x x x

"(B) x x x

"(C) x x x

"The Department of Finance shall review, at least once every three (3) years, regulations and processes for the withholding of creditable tax under this Code, and direct the Bureau of Internal Revenue to amend rules and regulations for the same, should it be found during the review that the existing rules, regulations, and processes for the withholding of creditable tax under this Code adversely and materially impact the taxpayer."

SEC. 12. Section 109 of the National Internal Revenue Code of 1997, as amended, is hereby further amended to read as follows:

"SEC. 109. *Exempt Transactions*. -

"(1) Subject to the provisions of Subsection (2) hereof, the following transactions shall be exempt from the value-added tax:

"x x x

"(P) Sale of 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 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).

"x x x

"(R) Sale, importation, printing or publication of books, and any newspaper, magazine, journal, review bulletin, or any such educational reading material covered by the UNESCO Agreement on the Importation of Education, Scientific, and Cultural Materials, including the digital or electronic format thereof: *provided*, That the materials enumerated herein are not devoted principally to the publication of paid advertisements;

"x x x

"(AA) Sale of or importation of prescription drugs and medicines for:

"(i) Diabetes, high cholesterol, and hypertension beginning January 1, 2020; and

"(ii) Cancer, mental illness, tuberculosis, and kidney diseases beginning January 1, 2021;

"*Provided*, That the DOH shall issue a list of approved drugs and medicines from this purpose within sixty (60) days from the effectivity of this Act; and