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SENATE  
Proposed Senate Resolution No. 244

RECEIVED BY:

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Introduced by Senator Aquilino "Koko" Pimentel III

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**A RESOLUTION  
DIRECTING THE SENATE COMMITTEE ON WAYS AND  
MEANS, TO CONDUCT AN INQUIRY, IN AID OF  
LEGISLATION, ON THE IMPOSITION OF VALUE-ADDED TAX  
ON IMPORTATIONS AND LOCAL PURCHASES OF GOODS  
AND SERVICES DIRECTLY AND EXCLUSIVELY USED IN THE  
REGISTERED PROJECT OR ACTIVITY OF DOMESTIC  
MARKET ENTERPRISES IN SPECIAL ECONOMIC ZONES**

WHEREAS, Section 294(E) of the National Internal Revenue Code of 1997 ("Tax Code"), as amended by Republic Act No. 11534 ("Corporate Recovery and Tax Incentives for Enterprises Act" or the CREATE Law), provides, to wit:

*"SEC. 294. Incentives. - Subject to the condition and period of availment in Sections 295 and 296, respectively, the following types of tax incentives may be granted to registered projects or activities:*

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*"(E) Value-Added Tax (VAT) exemption on importation and VAT zero-rating on local purchases. (Emphasis supplied)*

WHEREAS, Section 295(D) of the Tax Code, as amended by the CREATE Law, provides, to wit:

*"SEC. 295. Conditions of Availment. - The tax incentives in the preceding Section shall be governed by the following rules:*

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*"(D) 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 projects or activity **by a registered business enterprise.** (Emphasis supplied)*

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**WHEREAS**, Section 311 of the Tax Code, as amended by the CREATE Law, provides, to wit:

*SEC. 311. Investments Prior to the Effectivity of This Act. - Registered business enterprises with incentives granted prior to the effectivity of this Act shall be subject to the following rules:*

*"(A) **Registered business enterprises** whose projects or activities were granted only an income tax holiday prior to the effectivity of this Act shall be allowed to continue with availment of the income tax holiday for the remaining period of the income tax holiday as specified in the terms and conditions of their registration: Provided, That for those that have been granted the income tax holiday but have not yet availed of the incentive upon the effectivity of this Act, they may use the income tax holiday for the period specified in the terms and conditions of their registration;*

*"(B) **Registered business enterprises**, whose projects or activities were granted an income tax holiday prior to the effectivity of this Act and that are entitled to the five percent (5%) tax on gross income earned incentive after the income tax holiday, shall be allowed to avail of the five percent (5%) tax on gross income earned incentive based on Subsection (C); and*

*"(C) Registered business enterprises currently availing of the five percent (5%) tax on gross income earned granted prior to the effectivity of this Act shall be allowed to continue availing the said tax incentive at the rate of five percent (5%) for ten (10) years." (Emphasis supplied)*

**WHEREAS**, on 22 June 2021, the Department of Finance ("DOF") and the Department of Trade and Industry ("DTI") issued the Implementing Rules and Regulations of the CREATE Law ("CREATE Law IRR"). Insofar as incentives on value-added tax ("VAT") are concerned, Part II, Rule 2, Section 5 of the CREATE Law IRR provides:

*"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 export enterprises, during the period of registration of the said registered project or activity with the concerned IPA; Provided, That transactions falling under Section 106 (A) (2) (a) (3), (4), and (5) and Section 108 (B) (1) and (5) of the Code, as amended, shall be subject to the twelve percent (12%) VAT pursuant to Revenue Regulations 09-2021. Provided, further, That excess input taxes attributable to zero-rated sales by VAT-registered RBEs, may at the RBEs option, be refunded or applied for a tax credit, subject to the guidelines provided under Revenue Regulations No. 13-2018, as amended.*

*The direct and exclusive use in the registered project or activity refers to raw materials, inventories, supplies, equipment, goods, services and other expenditures necessary for the registered project or activity without which the registered project or activity cannot be carried out." (Emphasis supplied)*

**WHEREAS**, insofar as enjoyment of VAT incentives for registered business enterprises with incentives granted prior to the effectivity of the CREATE Law, Part VI, Rule 18, Section 5 of the CREATE Law IRR provides:



*“SECTION 5. Non-income related tax incentives. – All registered business enterprises that will continue to avail of their existing tax incentives subject to Sections 1, 2 and 3 of this Rule, may continue to enjoy the duty exemption until the expiration of the CAI/Admission Entry or until the expiration of the transitory period under Section 311 of the Code. Provided, 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 the **export enterprises** during the period of registration of the said registered project or activity with the concerned IPA; Provided further, That, transactions falling under Section 106(A)(2)(a)(3), (4) and (5) and Section 108(B(1) and (5) of the Code, as amended, shall be subject to the twelve percent (12%) VAT pursuant to Revenue Regulations No. 09-2021. Provided finally, That excess input taxes attributable to zero-rated sales by VAT-registered RBEs, may at the RBE’s option, be refunded or applied for a tax credit, subject to the guidelines provided under Revenue Regulations No. 13-2018, as amended.*

*After the expiration of the transitory period under Section 311 of the Code and without prejudice to Rule 3 Section 3, all applicable taxes shall apply.” (Emphasis supplied)*

**WHEREAS**, on 7 December 2021, the Bureau of Internal Revenue (“BIR”) issued Revenue Regulations (“RR”) No. 21-2021 amending certain provisions of RR No. 16-2005 to implement Sections 294(E) and 295(D) of the Tax Code, as amended by the CREATE Law, and Section 4, Rule 2 and Section 5, Rule 18 of the CREATE Law IRR. In particular, Sections 4.106-5 and 4.108-5 of RR No. 16-2005 now provides, to wit:

*“SEC. 4.106-5. Zero-Rated Sales of Goods or Properties. — A zero rated sale of goods or properties by a VAT-registered person is a taxable transaction for VAT purposes but shall not result in any output tax. However, the input tax on purchases of goods, properties, or services, attributable to such zero-rated sale, shall be available as tax credit or refund in accordance with these Regulations.*

*The following sales by VAT-registered persons shall be subject to zero-percent (0%) rate:*

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*(c) Sale of raw materials, inventories, supplies, equipment, packaging materials, and goods, 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 Republic Act No. 11534 or the "Corporate Recovery and Tax Incentives for Enterprise Act" ("CREATE Act"), and Section 5, Rule 2 of its IRR for a maximum period of seventeen (17) years from the date of registration, unless otherwise extended under the SIPP; Provided, That the term "**registered export enterprise**" shall refer to an **export enterprise** as defined under Section 4 (M), Rule 1 of the CREATE Act IRR, that is also a registered business enterprise as defined in Section 4 (W) of the same IRR: Provided further, That the above-described sales to existing **registered export enterprises** located inside ecozones and freeport zones shall also be qualified for VAT zero-rating under this sub-item until the expiration of the transitory period. (Emphasis supplied)*

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*"SEC. 4.108-5. Zero-Rated Sale of Services. — (a) In general. — A zero-rated sale of service (by a VAT-registered person) is a taxable transaction for VAT purposes, but shall not result in any output tax. However, the input tax on purchases of goods, properties or services attributable to such zero-rated sale shall be available as tax credit or refund in accordance with these Regulations. (b) Transactions Subject to Zero Percent (0%) VAT Rate. — The following services performed in the Philippines by a VAT-registered person shall be subject to zero percent (0%) VAT rate:*

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*(3) Sale of services, including provision of basic infrastructure, utilities, and maintenance, repair and overhaul of equipment, 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 for a maximum period of seventeen (17) years from the date of registration, unless otherwise extended under the SIPP; Provided, That the term "**registered export enterprise**" shall refer to an **export enterprise** as defined under Section 4 (M), Rule 1 of the CREATE IRR, that is also a registered business enterprise as defined in Section 4 (W) of the same IRR: Provided further, That the above-described sales to **existing registered export enterprises** located inside ecozones and freeport zones shall also be qualified for VAT zero-rating under this sub-item until the expiration of the transitory period. (Emphasis supplied)*

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**WHEREAS**, the BIR issued Revenue Memorandum Circular No. 24-2022, which provided, among others, that:

*Q4: Can enterprises located within the Ecozones or Freeport Zones still invoke Sections 106 (A) (2) (b) and 108 (B) (3) the Tax Code, as amended, after the effectivity of CREATE Act to claim VAT zero-rating on their local purchases of goods and services?*

*A4: No. With the CREATE Act already in place, business enterprises duly registered with the concerned IPA 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**. (Emphasis supplied)*

**WHEREAS**, pursuant to the above IRR, the Clark Development Corporation ("CDC") has issued Memorandum Circular No. IPDII-22-04-



14 notifying Clark Freeport Zone (CFZ) locators that the enjoyment of VAT exemption and zero-rated privileges applies only to export enterprises; that locators not categorized as export enterprises shall revert to being domestic enterprises; and that existing locators may continue to enjoy their 5% Gross Income Earned (GIE) only within the applicable transitory period.

**WHEREAS**, the CDC has required locators, particularly domestic market enterprises, to execute an Undertaking on CREATE wherein locators are asked to confirm that VAT-exemption on importation and VAT zero-rating on local purchases shall only apply to goods and services directly attributable to and exclusively used in the registered project or activity of said registered export enterprises located inside the ecozones and freeport zones until the expiration of the transitory period. Further, the locators are asked to undertake to pay duties and taxes on imported articles retroactive upon effectivity of the CREATE Law or such later date as determined by the relevant government agency.

**WHEREAS**, there appears to be some inconsistency between the CREATE Law, on one hand, and the CREATE Law IRR and the aforementioned BIR issuances, on the other. In relation to the VAT exemption on importation and the VAT zero-rating on local purchases of goods and services directly and exclusively used in the registered project or activity, the CREATE Law, in using the term "registered business enterprise", does not make any distinction between domestic market enterprises and export enterprises. The CREATE Law IRR and the aforementioned BIR issuances have imposed an additional requirement not found in the law, i.e. to be an export enterprise, to be entitled to the VAT incentives under the CREATE Law.

**WHEREAS**, insofar as registered business enterprises with incentives granted prior to the effectivity, there appears to be some inconsistency between the transitory provisions of the CREATE Law and the CREATE Law IRR. Nowhere in the transitory provisions of the CREATE Law does it state that such registered business enterprises, particularly if they are domestic market enterprises, can no longer enjoy the VAT exemption on importation and the VAT zero-rating on local purchases of goods and services. Notably, the 5% Gross Income Earned being enjoyed by such registered business enterprises is in lieu of all taxes, including VAT.

**WHEREAS**, the CREATE IRR and the aforementioned BIR issuances in effect require suppliers to pass on VAT to locators in the CFZ and other special economic zones particularly if they are domestic market enterprises and regardless if they are still currently enjoying the 5% GIE during the transitory period.

**WHEREAS**, the VAT incentives were the primary drivers of locators in deciding to set up their businesses in the special economic zones. With the CREATE IRR and the aforementioned BIR issuances, suppliers would now then pass on VAT to the locators in the special economic zones particularly if they are domestic market enterprises. Domestic market enterprises, currently under the 5% preferential tax regime, are registered with the BIR as non-VAT taxpayers and thereby have no mechanism to recover the passed on VAT. Consequently, the 12% VAT passed on by suppliers to domestic market enterprise will form part of the latter's cost of sales, severely reducing their net income and cash flow.

**WHEREAS**, legal clarity, certainty, and predictability are crucial to enable businesses to grow and invest in the Philippines. The above cited inconsistencies reduce investors' confidence. Worse, the CREATE Law IRR and BIR issuances are contrary to the CREATE Law's policy of promoting global competitiveness, tax incentives uniformity, and fiscal stability for both local and foreign locators and whether it is an export domestic market enterprise.

**WHEREAS**, it is thus imperative for the DOF, the DTI, the BIR, the CDC and other investment promotion agencies, and other relevant government agencies to explain the inconsistencies between the CREATE Law and the CREATE Law IRR and the aforementioned BIR issuances.

**NOW, THEREFORE, BE IT RESOLVED** as it is hereby resolved to direct the Senate Committee on Ways and Means, to conduct an inquiry, in aid of legislation, 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 domestic market enterprises in special economic zones, with the end in view of identifying inconsistencies between our tax laws and the implementing rules and regulations and making changes to our tax laws and regulations, if found necessary.



*Adopted,*

  
**AQUILINO "KOKO" PIMENTEL III**