

REVENUE REGULATIONS NO. 5-2021 issued on April 8, 2021 implements the new Income Tax rates on the regular income of corporations, on certain passive incomes, including additional allowable deductions from Gross Income of persons engaged in business or practice of profession pursuant to Republic Act (RA) No. 11534 (Corporate Recovery and Tax Incentives for Enterprises or CREATE Act), which further amended the National Internal Revenue Code (NIRC) of 1997.

The matrix below shows the new Income Tax rates applicable to the regular taxable income of corporations.

Type of Corporation	The higher between the "Regular" or "Minimum Corporate Income Tax(MCIT)" rates			
	Regular		MCIT	
	Rate	Effectivity	Rate	Effectivity
Domestic Corporation:				
Domestic corporations, in general	25%	July 1,2020	1%	July 1,2020 to June 30,2023
			2%	July 1, 2023
For corporations with net taxable income not exceeding Five Million Pesos(₱5,000,000) AND total assets not exceeding One Hundred Million(₱100,000,000), excluding the land on which the particular business entity's office, plant and equipment are situated	20%	July 1,2020	1%	July 1, 2020 to June 30, 2023
			2%	July 1, 2023
Proprietary Educational Institutions and Hospitals	1%	July 1,2020 to June 30, 2023	Not Applicable	
	10%	July 1,2023		
Foreign Corporation [on taxable income (e.g., net or gross income, as applicable) derived from all sources within the Philippines]:				
Resident Foreign Corporation	25%	July 1,2020	1%	July 1, 2020 to June 30, 2023
			2%	July 1, 2023
Offshore Banking Unit (OBUs) (Note: OBUs shall now be taxed as resident foreign corporation upon effectivity of the CREATE)	25%	Upon the effectivity of the CREATE	1%	Upon the effectivity of the CREATE until June 30, 2023
			2%	July 1,2023

Type of Corporation	The higher between the "Regular" or "Minimum Corporate Income Tax(MCIT)" rates			
	Regular		MCIT	
	Rate	Effectivity	Rate	Effectivity
Regional Operating Headquarters (ROHQ)	25%	January 1, 2022	1%	January 1, 2022 to June 30, 2023
			2%	July 1, 2023
Non-Resident Foreign Corporation	25%	January 1, 2021	Not applicable	

The MCIT is imposed beginning on the fourth taxable year immediately following the year in which such corporation commenced its business operations, when it is greater than the regular Income Tax computed for the taxable year.

Domestic corporations shall account separately in their Annual Financial Statements (AFS) the cost of the land on which the particular business entity's office, plant and equipment are situated, and shall not lump the same in one account title nor consolidate its cost with other fixed asset accounts.

In the case of proprietary educational institutions or hospitals, if the gross income from "unrelated trade, business or other activity" (as defined under Section 2 of this Regulations) exceeds fifty percent (50%) of the total gross income derived by such educational institutions or hospitals from all sources, the tax prescribed for domestic corporations shall be imposed on the entire taxable income.

GOCCs, agencies and instrumentalities, except the Government Service Insurance System (GSIS), Social Security System (SSS), Home Development Mutual Fund (HDMF), Philippine Health Insurance Corporation (PHIC), and the local water districts, shall pay such rate of tax upon their taxable income as are imposed upon corporations or associations engaged in a similar business, industry, or activity.

The matrix below shows the new Income Tax rates applicable to certain passive incomes of individuals and corporations.

Type of Individual Corporation	Nature of Income	Rate	Effectivity
Non-Resident Alien Individual	Winnings from Philippine Charity Sweepstake Office (PCSO) games amounting to more than ₱ 10,000.00	20%	Upon the effectivity of the CREATE
	Winnings from PCSO games amounting to ₱ 10,000.00 and below	Exempt	

Type of Individual Corporation	Nature of Income	Rate	Effectivity
Domestic Corporation	Inter-corporate Dividends (domestic and foreign source dividends)	From another domestic corporation - Exempt From non-resident foreign corporation - 25% or 20%, as the case may be	For foreign source dividends, these will be exempt from Income Tax upon the effectivity of the CREATE, <u>subject</u> to the conditions imposed under <u>Section 5</u> of this Regulations
Resident Foreign Corporation	Interest income from a depositary bank under the expanded foreign currency deposit system	15%	Upon the effectivity of the CREATE
	Capital gains from sale of shares of stock not traded in the stock exchange	15%	Upon the effectivity of the CREATE
Non-resident Foreign Corporation	Gross income received 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 from sale of shares of stock not traded in the stock exchange	25%	January 1, 2021
	Intercorporate dividend received from a domestic corporation, in general However, if the country in which the non-resident foreign corporation is domiciled, allows a tax credit equivalent to the difference between the regular income tax rate of 25% under Section 28 (B)(1) of the Tax Code (25%) and the fifteen percent (15%) tax on	25% 15%	January 1, 2021 January 1, 2021

Type of Individual Corporation	Nature of Income	Rate	Effectivity
	intercorporate dividends or does not impose tax on dividends, the rate to be imposed shall be 15%		
	Capital gains from sale of shares of stock not traded in the stock exchange	15%	Upon the effectivity of the CREATE

In general, foreign-sourced dividends received by domestic corporations are subject to Income Tax. However, the same shall be exempt if all of the following conditions concur:

- a. The dividends actually received or remitted into the Philippines are reinvested in the business operations of the domestic corporation within the next taxable year from the time the foreign-source dividends were received or remitted;
- b. The dividends received shall only be used to fund the working capital requirements, capital expenditures, dividend payments, investment in domestic subsidiaries, and infrastructure project; and
- c. The domestic corporation holds directly at least twenty percent (20%) in value of the outstanding shares of the foreign corporation and has held the shareholdings uninterrupted for a minimum of two (2) years at the time of the dividends distribution. In case the foreign corporation has been in existence for less than two (2) years at the time of dividends distribution, then the domestic corporation must have continuously held directly at least twenty percent (20%) in value of the foreign corporation's outstanding shares during the entire existence of the corporation.

Absent any one of the above conditions, the foreign-sourced dividends shall be considered as taxable income of the domestic corporation in the year of actual receipt or remittance, subject to surcharges, interest, and penalties, as applicable.

For this purpose, to avail of the exemption, the domestic corporation shall:

- a. Submit, thru the responsible corporate officers, to the concerned BIR office within thirty (30) calendar days from actual receipt of the remitted dividends a Sworn Statement/Affidavit containing (i) the fact of actual receipt of such dividends, (ii) the amount and the source (non-resident foreign corporation [NRFC]) of such dividends, including their shareholdings in that NRFC and the holding period at the time of the dividends distribution, and (iii) a statement that they shall fully comply with the conditions of the exemptions above stated;
- b. In the year of receipt of dividend, attach to the Audited Financial Statements (AFS) an Independent Auditor Sworn Certification as to (i) the fact of actual receipt of the remitted dividends, (ii) the amount and the source (NRFC) of such dividends, including their shareholdings in that NRFC and the holding period at the time of the dividends distribution, (iii) the fact that the domestic corporation, thru its Board, has appropriated or has a plan to reinvest the

dividends in its business operations to fund its working capital requirements, capital expenditures, dividend payments, investment in domestic subsidiaries, or infrastructure project, and (iv) if any amount has been disbursed, a statement that said disbursement complies with the above requirements.

The Sworn Statement/Affidavit in item (a) hereof and the Independent Auditor Sworn Certification shall be deemed as substantial compliance with the above conditions for exemption without the need of securing a written tax exemption ruling/certificate from the BIR. In addition, a disclosure of the dividends in the said AFS, which shall be attached to the Annual Income Tax Return (AITR) to be filed in the year of receipt, as well as the amount of dividend deemed exempt from Income Tax shall be declared in reconciliation part of the said AITR.

- c. In the immediately following taxable year, attach to the AITR a Sworn Certification prepared and executed by an Independent Auditor on the utilization or non-utilization of the dividends received by the corporation. The Sworn Certification on the utilization of the dividends received shall confirm the taxpayer's full compliance with the conditions for its exemption. However, if the Certification will state non-utilization of the dividends received, the corresponding tax due on the unutilized dividends shall be declared as taxable income, subject to surcharges, interest, and penalty, if any.

Further, no credit or deduction under Section 34(C) of the Tax Code shall be allowed for any taxes of foreign countries paid or incurred by the domestic corporation in relation to the exempt foreign-sourced dividends. Finally, any taxes of foreign countries paid or incurred by the domestic corporation in relation to the exempt foreign-sourced dividends shall be disregarded in computing the limitations provided under Section 34(C)(4) of the Tax Code.

The improperly accumulated earnings tax shall no longer be imposed on corporations upon the effectivity of the CREATE onwards. This shall apply to the entire taxable year for all fiscal years/taxable years ending after the effectivity of CREATE.

Under Section 34 of the Tax Code, as amended, it was provided that except for taxpayers earning purely compensation income arising from personal services rendered under an employer-employee relationship, in computing taxable income subject to Income Tax under Sections 24(A), 25(A), 26, 27(A), 27(B), 27(C) and 28(A)(I) of the National Internal Revenue Code of 1997, as amended, where the person subject to Income Tax opted to claim itemized deductions, there shall be allowed the following deductions from gross income: a) Expenses; b) Interest; c) Taxes; d) Losses; e) Bad Debts; f) Depreciation; g) Depletion of Oil and Gas Wells and Mines; h) Charitable and other Contributions; i) Research and Development; and j) Pension Trusts. The policies in the deduction of "Expenses" and "Interest" from the gross income are specified in the Regulations. The existing implementing rules and regulations governing the policies in the application of other allowable deductions, if any, shall remain in effect.

No gain or loss shall be recognized on a corporation or on its stock 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 as defined under Section 2 of this Regulations.

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 exchanges of property used for business for shares of stocks covered under Section 8 of the Regulations shall not be subject to Value-Added Tax (VAT). In all of the foregoing instances of exchange of property, prior Bureau of Internal Revenue (BIR) confirmation or tax ruling shall not be required for purposes of availing the tax exemption. The concerned parties can implement the transaction covered by Section 8 of the Regulations including, but not limited to, the issuance of the Certificate Authorizing Registration (CAR) by the Revenue District Office (RDO) where the property is located, in case of real properties, or to the RDO where the business is registered, in case of shares of stocks, subject to post-transaction audit by the BIR.

For the rate to be used in the deduction of a certain percentage of interest income subject to Final Tax from the claimed interest expense to come up with the allowable interest expense, or the interest arbitrage, the applicable rate specified in Section 9 of the Regulations shall be applied for Taxable Year (TY) 2020 by corporations, except non-resident foreign corporations.

Another option in the computation of the interest arbitrage applicable for TY 2020 for corporations under itemized deductions is to use the transitory rates specified in the table below, and multiply the same with the amount of gross interest income subjected to Final Tax to find the amount of interest deductible from the interest expense claimed, with the allowable interest expense as the end result.

For the computation of Interest Arbitrage		
Annual Accounting Period (Transition TY 2020)	Corporations subject to Regular Rates	Other domestic Corporations with net Taxable income ≤5M & total assets ≤100M, exclusive of land
	30% / 25%	30% / 20%
FY 7-31-20	31.92%	30.25%
FY 8-31-20	30.83	27.50
FY 9-30-20	29.75	24.75
FY 10-31-20	28.67	22.00
FY 11-30-20	27.58	19.25
CY 12-31-20	26.50	16.50
FY 1-31-21	25.42	13.75
FY 2-28-21	24.33	11.00
FY 3-31-21	23.25	8.25
FY 4-30-21	22.17	5.50
FY 5-31-21	21.08	2.75
FY 6-30-21	20.00	0.00

In the computation of Income Tax due of the corporations for TY 2020, regardless of the taxpayers' annual accounting period, the taxable income shall be computed without regard to the specific date when sales, purchases and other transactions occur. The income and expenses shall be deemed to have been earned and spent equally for each month of the period. The procedures on how to compute the corporate Income Tax due for TY 2020 are specified in Section 9(B) of the Regulations.

For ease of computing the Income Tax due during the transition period, the following rates reflected in the matrix below may be used:

TRANSITORY RATES				
Annual Accounting Period (Transition TY 2020)	Regular Corporate Income Tax Rates	Other domestic corporations with net taxable income ≤5M & total assets ≤100M, exclusive of land	MCIT	Proprietary Non-profit Edu/Hosp
	30%/25%	30%/20%	2%/1%	10%/1%
FY 7-31-20	29.58%	29.16%	1.91%	9.25 %
FY 7-31-20	29.58%	29.16%	1.91%	9.25%
FY 8-31-20	29.16	28.33	1.82	8.50
FY 9-30-20	28.75	27.50	1.73	7.75
FY 10-31-20	28.33	26.66	1.64	7.00
FY 11-30-20	27.91	25.83	1.55	6.25
CY 12-31-20	27.50	25.00	1.50	5.50
FY 1-31-21	27.08	24.16	1.41	4.75
FY 2-28-21	26.66	23.33	1.32	4.00
FY 3-31-21	26.25	22.50	1.23	3.25
FY 4-30-21	25.83	21.66	1.14	2.50
FY 5-31-21	25.41	20.83	1.05	1.75
FY 6-30-21	25.00	20.00	1.00	1.00

For taxpayers who have already filed their Income Tax returns for TY 2020 (calendar year 2020; fiscal year ending from July 31, 2020 to fiscal year ending February 28, 2021) may amend their Income Tax returns using the transitory rates per above matrix, and any resulting excess/overpayment can be claimed for refund or Tax Credit Certificate, or carried over to the next taxable year, at taxpayers' option.