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Tax Incentives for the Philippine Agricultural Industry

Implications of Republic Act No. 11534, Otherwise Known as the Corporate Recovery and Tax Incentives for Enterprises Act, on the Powers of the Investment Promotion Agencies in the Grant and Administration of Tax Incentives

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Tax Incentives for the Philippine Agricultural Industry*

I. TERMS OF REFERENCE

Proposal urging the new administration to hasten the tax perks for agricultural industry subsectors under the Strategic Investment Promotion [*sic*] Plan (SIPP).[1] (See Annex A.)

II. BACKGROUND INFORMATION

The Philippine agricultural industry generally involves the exploitation of vegetable and animal natural resources, comprising the activities of growing crops, raising and breeding animals, and harvesting timber and other plants, animals, or animal products from a farm or their natural habitats.[2]

Based on the Philippine Statistics Authority (PSA) data, the income derived from the agricultural industry, or gross value added (GVA)[3], averaged P1.61 trillion annually from 2010 to 2021, constituting only 10.94% of the Philippine gross domestic product.[4]

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[1] Aurelio, J. M. (2022, June 23). Salceda pushes tax perks for agricultural sector. *Philippine Daily Inquirer*. Retrieved July 17, 2022, from https://newsinfo.inquirer.net/1615002/salceda-pushes-tax-perks-for-agriculture-sector.

[2] PSA. (2019, December 17). 2019 Updates to the 2009 Philippine Standard Industrial Classification. Retrieved July 15, 2022, from https://psa.gov.ph/content/philippine-standard-industrial-classification-psic

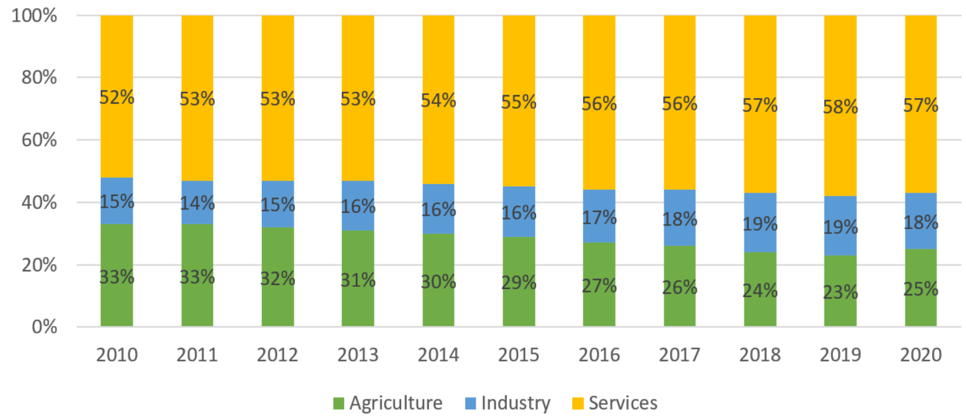
[3] The value of output less the value of intermediate consumption. GVA is composed of compensation, depreciation, indirect taxes paid net of subsidies received and the operating surplus, which is the payment to the producer as entrepreneur (Source: https://psa.gov.ph/statistics/technical-notes/167198).

[4] PSA. (2022). Annual Gross Domestic Product Series (1946 to 2021) (at Current and Constant 2018 Prices, as of April 7, 2022) [Data set]. Retrieved from https://psa.gov.ph/sites/default/files/Annual-1946-to-2021_0.xlsx.

Nevertheless, the industry ranked second highest in terms of the number of workers, with an average share of 28.45% of total employment from 2010 to 2020. In 2010, 33% of employed Filipinos worked in the agricultural industry, but this declined to 23% in 2019. In 2020, there was a 3.40% increase in the number of Filipinos gainfully employed in the agricultural industry from 9.72 million in 2019 to 10.05 million in 2020. (See Figures 1 and 2.) This increase can be attributed to the effects of the Coronavirus Disease 2019 pandemic, as workers left the urban centers and shifted to agricultural activities in the provinces.[5]

Figure 1

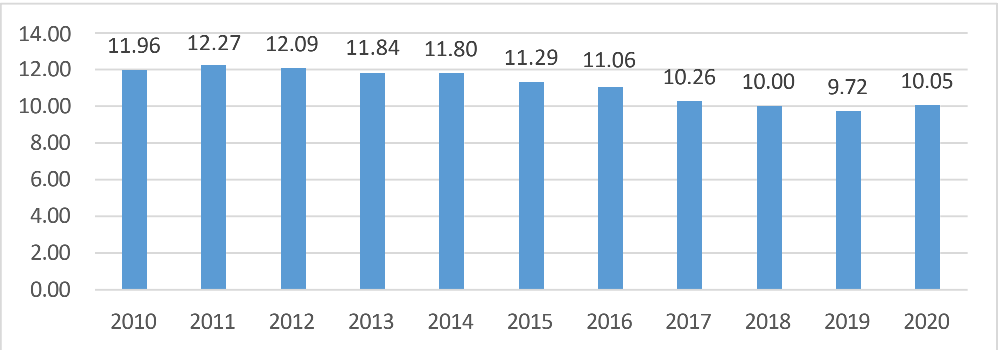
Share of Major Industry to Total Employment, Calendar Year (CY) 1995-2020



Note. Gathered from the Annual Labor Force Survey of the PSA.
No data available for 2021.

Figure 2

Number of Workers Gainfully Employed in the Agricultural Industry, CY 2016-2020 (in millions)



Note. Gathered from the PSA.
No data available for 2021.

[5] Briones, R. (February 2022). Modernizing Agriculture and Fisheries: Overview of Issues, Trends and Policies. Retrieved from: https://pidswebs.pids.gov.ph/CDN/PUBLICATIONS/pidsdps2205.pdf.

The agricultural industry of the country is divided into three major sectors: (a) crop and animal production, hunting, and related service activities; (b) forestry and logging; and (c) fishing and aquaculture. Among these sectors, crop and animal production is the biggest contributor to income generated, accounting for 76.57% of the total average income from the agricultural industry from 2010 to 2021.

In terms of production, the crop sector registered a total of 428.34 million metric tons (MT) from 2015 to 2019. Of the various crops produced by the said sector, sugarcane accounts for more than a quarter (28.02%), or 120 million MT, of the total crop production of the country for the said period. *Palay* or rice and coconut are also top crop products of the country, with 92.93 million MT and 72.10 million MT production, respectively. (See Table 1.)

Table 1

Crop Production, CY 2015-2019 (in thousand MT)

Crop	2015	2016	2017	2018	2019	Total
Palay	18,149.8	17,627.2	19,276.3	19,066.1	18,814.8	92,934.2
Corn	7,518.8	7,218.8	7,914.9	7,771.9	7,978.8	38,403.2
Banana	9,083.9	8,903.7	9,166.3	9,358.8	9,157.7	45,670.4
Coconut	14,735.2	13,825.2	14,049.1	14,726.2	14,765.1	72,100.8
Mango	902.7	814.1	737.0	711.7	737.9	3,903.4
Sugarcane	22,926.4	22,370.5	29,286.9	24,730.8	20,719.3	120,033.9
Pineapple	2,582.7	2,612.5	2,671.7	2,731.0	2,747.9	13,345.8
Cassava	2,714.3	2,755.1	2,806.7	2,723.0	2,630.8	13,629.9
Rubber	398.1	362.6	407.0	423.4	431.7	2,022.8
Sweet Potato	536.0	529.5	537.3	525.6	525.9	2,654.3
Onion	181.2	122.6	184.4	172.7	222.1	883.0
Eggplant	232.9	235.6	241.9	244.8	249.9	1,205.1
Coffee	72.3	68.8	62.1	60.3	60.0	323.5
Tobacco	56.2	56.5	51.0	50.4	51.1	265.2
Abaca	70.4	71.8	68.8	71.5	72.2	354.7
Tomato	214.8	210.7	218.8	220.8	223.3	1,088.4
Potato	118.5	116.8	117.6	117.4	116.1	586.4
Ampalaya	88.9	87.5	89.5	87.4	89.3	442.6
Cabbage	125.8	123.1	122.5	120.7	128.1	620.2
Calamansi	162.7	118.2	116.7	113.6	126.0	637.2
Mongo	33.6	34.0	35.3	36.7	36.2	175.8
Cacao	6.0	6.3	7.0	8.0	8.5	35.8
Other crops	3,413.3	3,360.8	3,383.5	3,426.5	3,434.6	17,018.7
Total	84,324.5	81,631.9	91,552.3	87,499.3	83,327.3	428,335.3

Note. Gathered from the PSA.
No data available for 2020 and 2021.

The top Philippine agricultural exports include bananas, pineapple, and rubber. From 2016 to 2020, the banana exports of the country reached 15.93 million MT. Meanwhile, pineapple and rubber exports recorded 2.08 million MT and 0.60 million MT, respectively. (See Table 2.)

Table 2

Volume of Agricultural Exports, CY 2016- 2020 (in MT)

Commodity	2016	2017	2018	2019	2020	Total
Rice	263.3	322.0	308.9	344.9	310.0	1,549.1
Corn	346.9	595.5	333.8	415.3	1,670.8	3,362.3
Banana	1,733,836.3	2,855,635.1	3,126,203.3	4,403,496.3	3,808,470.5	15,927,641.5
Coconut	5,091.8	1,229.7	1,309.3	1,380.9	225.3	9,237.0
Mango	14,343.0	16,116.1	13,562.2	14,211.8	10,658.1	68,891.2
Sugarcane	0.7	1.3	0.5	1.6	3.8	7.9
Pineapple	599,343.1	494,273.0	391,982.1	631.486.2	594,725.8	2,080,324.0
Cassava	641.0	680.9	905.9	808.6	1,321.8	4,358.2
Rubber	66,965.7	132,732.2	118,109.7	124,272.0	158,328.8	600,408
Sweet Potato	23.8	25.8	29.8	732.7	623.3	1,435.40
Onion	601.3	548.3	121.0	379.2	163.0	1,812.8
Garlic	78.8	106.7	101.6	104.1	6.0	397.2
Eggplant	-	-	-	0.3	0.01	0.31
Coffee	5.9	-	17.1	14.2	17.8	55.0
Tobacco	23,907.7	34,439.0	37,088.6	40,425.6	32,420.5	168,281.4
Abaca	85.4	151.1	153.7	94.4	110.3	594.9
Tomato	0.4	-	-	-	-	0.40
Potato	0.7	2.1	0.9	6.6	0.4	10.70
Ampalaya	-	-	-	-	-	-
Cabbage	-	0.2	0.4	-	-	0.60
Calamansi	53.6	69.4	59.5	99.7	56.3	338.5
Mongo	2.9	21.6	2.3	385.1	96.9	508.8
Cacao	2,232.8	3,094.4	2,732.6	3,048.8	5,152.9	16,261.5
Total	2,447,825.1	3,540,044.4	3,693,023.2	4,590,222.1	4,614,363.3	18,885,478.1

Note. Data gathered from PSA
No data available for 2021

In terms of imports, rice is the top agricultural product that the country imports, reaching a total of 8.85 million MT from 2016 to 2020. This is followed by corn and garlic at 3.52 million MT and 0.38 million MT, respectively. During the same period, agricultural product importation was highest in 2019 at 3.87 million MT, which is 115% higher than the 2016 level. Rice was the main contributor to the increased importation in 2019, due to the enactment of Republic Act (RA) No. 11203,[6] or the Rice Tariffication Law, which liberalized rice importations by replacing the previous quantitative restrictions with a 35% tariff rate on imported rice. (See Table 3.)

Table 3

Volume and Value of Agricultural Imports, CY 2016- 2020 (in MT)

Commodity	2016	2017	2018	2019	2020	Total
Rice	609,363.6	888,085.9	2,006,348.6	3,122,094.1	2,226,121.5	8,852,013.7
Corn	806,118.6	475,244.0	1,016,746.9	458,429.3	768,534.7	3,525,073.5
Banana	14.3	1.9	2.3	0.6	22.1	41.2
Coconut	-	10.5	9.0	-	0.01	19.5
Mango	-	-	-	-	-	-
Sugarcane	-	0.3	-	-	-	0.3
Pineapple	67.8	4.1	-	-	-	71.9
Cassava	8.6	-	-	-	-	8.6
Rubber	54,902.2	45,614.5	49,783.9	56,134.8	39,727.0	246,162.4
Sweet Potato	3.0	2.2	-	0.5	23.8	29.5
Onion	135,295.6	34,084.0	108,080.7	23,589.8	87,525.5	364,985.8
Garlic	60,308.1	68,802.1	79,406.7	85,115.7	88,509.8	382,142.4
Eggplant	-	-	-	-	-	-
Coffee	41,161.9	21,836.5	41,288.9	35,091.1	46,277.9	185,656.3
Tobacco	40,704.7	40,276.2	65,363.3	54,133.8	46,503.7	246,981.7
Abaca	18.4	42.2	24.3	44.5	713.3	842.7
Tomato	-	0.01	-	0.1	-	0.1
Potato	20,246.5	20,262.4	23,355.0	25,688.9	26,636.6	116,189.4
Ampalaya	-	-	-	-	-	-
Cabbage	0.6	-	-	-	-	0.6
Calamansi	-	-	-	-	-	-
Mongo	31,232.4	36,474.8	38,230.7	36,645.7	41,002.6	183,586.2
Cacao	1,940.9	3,107.4	2,236.4	1,122.8	2,016.5	10,424.0
Total	1,801,387.2	1,633,849.0	3,430,876.7	3,874,501.9	3,373,615.0	14,114,229.8

Note. Data gathered from PSA.
No data available for 2021.

On the other hand, the livestock and poultry sector recorded 25.52 million MT gross production from 2015 to 2019. Hogs and chicken were the main livestock and poultry products of the country during this period, with hog production totaling 11 million MT and chicken production reaching 8.8 million MT. (See Table 4.)

[6] Entitled, "An Act Liberalizing the Importation, Exportation and Trading of Rice, Lifting for the Purpose the Quantitative Import Restriction on Rice, and for Other Purposes," (February 14, 2019).

Table 4

Livestock and Poultry Production, CY 2015-2019 (in thousand MT)

Particulars	2015	2016	2017	2018	2019	Total
Livestock	2,627.1	2,745.4	2,775.8	2,826.9	2,798.7	13,773.9
Carabao	142.0	144.7	144.4	143.1	140.7	714.9
Cattle	266.9	270.4	266.3	263.3	260.6	1,327.5
Hog	2,120.3	2,231.7	2,265.0	2,319.8	2,296.7	11,233.5
Goat	77.5	77.5	77.3	77.0	76.4	385.7
Dairy	20.4	21.1	22.8	23.7	24.3	112.3
Poultry	2,181.7	2,212.6	2,314.8	2,448.0	2,590.3	11,747.4
Chicken	1,660.8	1,674.5	1,745.9	1,836.7	1,927.4	8,845.3
Duck	33.9	32.2	31.1	30.8	30.1	158.1
Eggs	487.0	505.9	537.8	580.5	632.8	2,744.0
Total	4,196.7	4,228.6	4,331.8	4,466.0	4,609.3	25,521.3

Notes. Data gathered from the PSA.
No data available for 2020 and 2021.

III. TAX INCENTIVES AVAILABLE FOR THE AGRICULTURAL INDUSTRY

Over the years, the government has continuously addressed the challenges faced by the agricultural industry through various economic support and reforms. These challenges include, among others, access to land and water resources, vulnerability to climate and disaster risks, and limited infrastructure, which diminishes the contribution of the industry to the total economic output of the country.[7]

Nevertheless, the government recognizes the crucial role of the industry not only in economic transformation but also in food security and accessibility. Thus, the government supports the agricultural industry and agri-related projects by providing tax incentives and credit support, among other measures.

The grant of tax incentives to various preferred industries for investment, including the agricultural industry, is presently governed by RA 11534[8], otherwise known as the "Corporate Recovery and Tax Incentives for Enterprises (CREATE) Act". The said law aims to provide a more responsive and globally competitive tax incentive system that is performance-based, targeted, time-bound, and transparent.

[7] National Economic and Development Authority. (n.d.). Updated Philippine Development Plan 2017-2022. Retrieved July 27, 2022, from https://www.phcc.gov.ph/pdp-2017-2022-updated/

[8] Entitled, "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", (March 26, 2021).

Pursuant to the provisions of the Tax Code, as amended by RA 11534, the Fiscal Incentives Review Board (FIRB),[9] or the Investment Promotion Agencies (IPAs),[10] under a delegated authority, shall grant the appropriate fiscal incentives to qualified registered business enterprises (RBEs) only to the extent of their approved registered project or activity under the Strategic Investment Priority Plan (SIPP)[11]. The 2022 SIPP, approved by the President through Memorandum Order No. 61, s. 2022,[12] aims to attract high-value and labor-intensive investments that will create more jobs and further sharpen the competitiveness of the country in the global market. Accordingly, it contains the preferred areas of investments or priority activities eligible for the grant of tax incentives.

Under the 2022 SIPP, all activities listed in the 2020 Investment Priority Plan (IPP)[13] are included in the list of priority activities for investments and fall under Industry Tier I[14]. Under the 2020 IPP, the Agriculture, Fishery, and Forestry Industry, among others, is one of the preferred areas of investment. Thus, it is eligible for the grant of tax incentives under the Tax Code.

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[9] The FIRB, an inter-agency body created under Presidential Decree No. 776, s. 1975, as amended, with powers and functions expanded by RA 11534, is tasked to exercise policy making and oversight functions on the administration and grant of tax incentives by IPAs and other government agencies administering tax incentives; approve or disapprove the grant of tax incentives to the extent of the registered project or activity upon the recommendation of the IPAs, among others.

[10] Refer to government entities created by law, executive order, decree or other issuance, in charge of promoting investments, granting and administering tax and non-tax incentives, and overseeing the operations of the different economic zones and freeports in accordance with their respective special laws. These include the BOI, Regional Board of Investments-Autonomous Region in Muslim Mindanao, Philippine Economic Zone Authority, Bases Conversion and Development Corporation, Subic Bay Metropolitan Authority, Clark Development Corporation, John Hay Management Corporation, Poro Point Management Corporation, Cagayan Economic Zone Authority, Zamboanga City Special Economic Zone Authority, PHIVIDEC Industrial Authority, Aurora Pacific Economic Zone and Freeport Authority, Authority of the Freeport Area of Bataan, Tourism Infrastructure and Enterprise Zone Authority, and all other similar existing authorities or that may be created by law unless otherwise specifically exempted from the coverage of the Code [Title XIII, Chapter I, Section 293(H), CREATE Act].

[11] The SIPP contains the priority projects or activities, scope and coverage of location and industry tiers, recommendations for non-fiscal support and corresponding specific activities wherein investments are to be encouraged, and other information, analyses, data, guidelines, or criteria as the BOI may deem appropriate [Part I, Rule 1, Section 4(DD), CREATE Act Implementing Rules and Regulations].

[12] Entitled, “Approving the 2022 Strategic Investment Priority Plan”, (May 24, 2022).

[13] A list of investment priority sectors or preferred investment areas that may be given investment incentives. The 2020 IPP was approved through Memorandum Order No. 50 entitled, “Approving the 2020 Investment Priorities Plan”, (November 18, 2020).

[14] Tier I includes activities that (i) have high potential for job creation; (ii) take place in sectors with market failures resulting in under provision of basic goods and services; (iii) generate value creation through innovation, upgrading or moving up the value chain; (iv) provide essential support for sectors that are critical to industrial development; or (v) are emerging owing to potential comparative advantage.

Based on the Board of Investment (BOI) Memorandum Circular No. 2021-001[15], the preferred activities for investment in the Agriculture, Fishery, and Forestry industry include the following:

a. Commercial production of the agricultural, fishery, and forestry products; and

b. Nurseries, hatcheries, postharvest facilities, and other support services and infrastructures.

For Metro Manila, only agricultural infrastructure and support services and urban agriculture may qualify for registration as new, expansion, or modernization. All applications for agricultural and fishery production registration must be accompanied by an endorsement from the Department of Agriculture (DA).

Further, the production and manufacturing of export agri-products, and the extensive plantation of timber, non-timber, and fruit trees for commercial and industrial purposes, pursuant to Presidential Decree No. 705[16], are likewise included among the preferred areas of investments under the 2020 IPP.

Meanwhile, food security-related activities fall under Industry Tier II[17] of the 2022 SIPP. These activities cover products and services critical to competitively ensuring food security or in support of green/organic agriculture, as endorsed by the DA or the Philippine Council for Agriculture, Aquatic and Natural Resources Research and Development, such as but not limited to integrated food production and processing activities (e.g., dairy); production and/or adoption of hybrid seeds contained in the National Seed Industry Council Crop Variety Registration; manufacture of animal vaccine, pesticides, and fertilizers; and agricultural and fisheries machinery and equipment, and parts and components therefor.

Consequently, RBEs engaged in the said activities are eligible for the income tax-based incentives, and the period of availment is determined based on location and industry tiers[18] under the CREATE Act, as follows:

[15] Entitled, "General Policies and Specific Guidelines to Implement the 2020 Investment Priorities Plan", (February 9, 2021).

[16] Entitled, "Revising PD No. 389, Otherwise Known as the Forestry Reform Code of the Philippines", (May 19, 1975).

[17] Tier II includes activities that produce supplies, parts and components, and intermediate services that are not locally produced but are critical to industrial development and import-substituting activities, including crude oil refining.

[18] The industry tier of an activity is prioritized according to the national industrial strategy specified in the SIPP which will define the coverage of the tiers and provide the conditions for qualifying the activities.

Table 5

Duration of Income Tax-Based Incentives Under the CREATE Act[19]

Location tier	Tax Incentives and period of availment (in years)			
	Domestic market enterprise		Export-oriented enterprise	
	Tier I	Tier II	Tier I	Tier II
National Capital Region (NCR)	4 ITH + 5 ED	5 ITH + 5 ED	4 ITH + 10 ED/SCIT	5 ITH + 10 ED/SCIT
Metropolitan areas or areas contiguous and adjacent to the NCR	5 ITH + 5 ED	6 ITH + 5 ED	5 ITH + 10 ED/SCIT	6 ITH + 10 ED/SCIT
All other areas	6 ITH + 5 ED	7 ITH + 5 ED	6 ITH + 10 ED/SCIT	7 ITH + 10 ED/SCIT

Note. ITH – Income Tax Holiday; ED – Enhanced Deductions; SCIT – Special Corporate Income Tax.

Further, pursuant to the amended implementing rules and regulations of the CREATE Act, it is explicitly provided that registered domestic market and export enterprises shall enjoy exemption from customs duties on their importation of capital equipment, raw materials, spare parts, and accessories for their registered project or activity for a maximum period of 12 years and 17 years from the date of registration, respectively, unless otherwise extended under the SIPP. In the case of registered export enterprises, they are also eligible for value-added tax (VAT) exemption on their importation and VAT-zero rating on local purchases of goods and services directly and exclusively used in their registered project or activity, for a maximum period of 17 years from the date of registration, unless otherwise extended under the SIPP.

As of July 2022, 14 RBEs engaged in agricultural activity are availing of tax incentives under the CREATE Act, including ITH, SCIT, ED, customs duty, VAT exemption on importations, and VAT zero-rating on local purchases. These RBEs are either registered with the BOI or the Regional Board of Investments (RBOI). (See Annex B.)

In addition to the CREATE Act, other special laws provide tax and non-tax incentives to specific sectors of the agricultural industry. These sectors include those engaged in producing seeds, dairy products, sugarcane, high-value crops, and organic food. The types of tax and non-tax incentives accorded under these special laws include ITH, tax exemption on sales proceeds, duty-free importations, VAT zero-rating, and technical assistance from the government, among others. (See Table 6.)

[19] Rule 3, Section 6, IRR of Title XIII of the CREATE Act.

Table 6

List of Other Special Laws with Incentives Provisions to the Agricultural Industry Sectors

Law	Sector eligible for the grant of incentives	Tax and non-tax incentives available
RA 7308[20]	Local seed industry	Technical assistance from the government; and Exemption from duties and taxes, except VAT, for the technical equipment used in seed processing, sowing, meristem culture, storage, and quality testing by individuals, farmers' organizations, cooperatives, and corporations wholly owned by Filipinos during their first 5 years of operations
RA 7884[21]	Small farmers and small farmers' dairy cooperatives	Exemption from all taxes, except VAT, on proceeds from the sale of raw milk and milk products; and
	Milk Processors	Enjoyment of a presumptive input tax credit of 4% of the value of their gross purchases from small farmers and small farmers' dairy cooperatives.
RA 7900[22]	High-value crops[23] producer	Exemption from taxes and duties for project proponents of high-value crops, subject to the provisions of RA 6938, otherwise known as the Cooperative Code of the Philippines.
RA 10068[24]	Organic food and organic input producers	1. ITH and exemption for seven (7) years, starting from the date of registration of organic food and organic input producers;

[20] Entitled, "An Act to Promote and Develop the Seed Industry in the Philippines and Create a National Seed Industry Council and for Other Purposes", (March 27, 1992).

[21] Entitled, "An Act Creating the National Dairy Authority to Accelerate the Development of the Dairy Industry in the Philippines, Providing for a Dairy Development Fund, and for Other Purposes", (February 20, 1995).

[22] Entitled, "An Act to Promote the Production, Processing, Marketing and Distribution of High-Value Crops, Providing Funds Therefor, and for Other Purposes", (February 23, 1995).

[23] These are crops other than traditional crops which include, but are not limited to: coffee and cacao, fruit crops (citrus, cashew, guyabano, papaya, mango, pineapple, strawberry, jackfruit, rambutan, durian, mangosteen, guava, lanzones, and watermelon), root crops (potato and ubi), vegetable crops (asparagus, broccoli, cabbage, celery, carrots, cauliflower, radish, tomato, bell pepper, and patola), legumes, pole sitao (snap beans and garden pea), spices and condiments (black pepper, garlic, ginger, and onion), and cutflower and ornamental foliage plants (chrysanthemum, gladiolus, anthuriums, orchids, and statice).

[24] Entitled, "An Act Providing for the Development and Promotion of Organic Agriculture in the Philippines and for Other Purposes", (April 6, 2010).

Law	Sector eligible for the grant of incentives	Tax and non-tax incentives available
		2. Exemption from the payment of duties on the importation of agricultural equipment, machinery, and implements; 3. Identification by LGUs of local taxes that may be offered as incentives to organic input production and utilization; and 4. Provision of preferential rates and special window to organic input producers and users by the Land Bank of the Philippines.
RA 10659[25]	Refined sugar producer	VAT zero-rating on refined sugar withdrawn from warehouses for actual physical export to the world market.
RA 11321[26]	Agriculture and fisheries	Farmer and fisherfolk enterprises may avail of the following incentives: 1. Exemption from donor's tax on gifts and donations of real and personal properties; 2. Real property tax exemption on structures, buildings, and warehouses utilized for the storage of farm inputs and outputs; 3. Provision of preferential loan rates and special windows to accredited farms and fisherfolk enterprises; and 4. Income tax exemption for income arising from the operations of the enterprise provided that the enterprise is registered as barangay micro business enterprise under RA 9178.
RA 11901[27]	Agriculture and fisheries	Accessible loans and investments. Under RA 11901, all banking institutions are required to set aside a credit quota or a minimum mandatory agricultural and fisheries financing requirement of at least 25% of their total loanable funds.

[25] Entitled, "An Act Promoting and Supporting the Competitiveness of the Sugarcane Industry and for Other Purposes", (March 27, 2015).

[26] Entitled, "An Act Instituting the Farmers and Fisherfolk Enterprise Development Program of the Department of Agriculture", (April 17, 2019).

[27] Entitled, "An Act Strengthening the Financing System Including Capacity-Building and Organization for Agriculture, Fisheries, and Rural Development in the Philippines, Repealing for the Purpose Republic Act No. 10000 or the "The Agri-Agra Reform Credit Act of 2009", (July 28, 2022).

Overall, the proposal to include agricultural subsectors in the SIPP is consistent with the present thrust of the administration. President Ferdinand R. Marcos, Jr. has emphasized the need to modernize the country's agricultural industry in view of the looming global food crisis due to the ongoing war between Russia and Ukraine, which constricted the global supply chain. As discussed, the agricultural industry and food security-related activities are already listed as preferred areas of investment under Tiers I and II, respectively, of the current SIPP. Hence, there is already an existing legal framework to register and grant incentives to potential investments in the agricultural sector.

ANNEX A.

Philippine Daily Inquirer article entitled "Salceda pushes tax perks for the agricultural sector"

Salceda pushes tax perks for agriculture sector

By: Jeannette I. Andrade, Julie M. Aurelio - @inquirerdotnet
Philippine Daily Inquirer / 05:44 AM June 23, 2022

MANILA, Philippines — Albay Rep. Joey Salceda is urging the incoming Marcos administration to hasten tax perks for agricultural subsectors under the Strategic Investment Promotion Plan (SIPP) which will be the "country's top instrument of industrial planning."

According to Salceda, agriculture is a leading sector needed for the country's economic recovery and is covered by Republic Act No. 11534, or the Corporate Recovery and Tax Incentives for Enterprises (Create) Act.

The Albay lawmaker and House ways and means committee chair, who authored and sponsored the Create Act, pointed out that he has been working closely with the Department of Trade and Industry (DTI) and the Department of Agriculture to include several agricultural subsectors in the SIPP.

The SIPP is the list of industries eligible for tax perks under the Create Act, which President Rodrigo Duterte signed into law in March last year. It's considered the largest fiscal stimulus for businesses in the country.

However, the DTI only completed the transitional version of the SIPP in May and the comprehensive version of the plan has not been completed.

Salceda urged incoming Trade Secretary Alfredo Pascual to finish crafting the comprehensive version of the SIPP to help revive the agriculture sector, boost production and help reduce consumer prices.

Salceda explained, "By giving key agriculture sectors tax incentives, we can lower production costs and encourage farm modernization. That will lower consumer prices and boost domestic food supply."

Focus on inflation

At the same time, Salceda lauded incoming central bank chief Felipe Medalla for focusing on inflation, which hastened to 5.4 percent in May, instead of being distracted by the depreciation of the Philippine peso.

"I agree with incoming Governor Medalla that the focus should be fighting inflation, not supporting the peso. I've seen how futile that can be when the problem is external," he said, after the peso slid to P54.265 against the US dollar, its weakest since 2018, on Tuesday.

Salceda recalled that the central bank "tried to support" the Philippine peso during the 1997 Asian financial crisis and ended up spending so much on a pointless exercise.

"That didn't work then, and it wouldn't work now," Salceda said, adding that Medalla's announcement of at least two more interest rate increases this year was more significant.

Salceda said he was "not alarmed" with the depreciation of the Philippine peso, adding that "it's even debatable whether that's a problem."

Annex B

List of RBEs Classified under the Agricultural Sector under the CREATE Act as of July 2022

Company name	Activity/Project description	Type of enterprise	Tax incentives granted
RBE 1	Agricultural crop	Domestic	ITH, duty-free importation
RBE 2	Agricultural crop	Domestic	ITH, duty-free importation
RBE 3	Agricultural crop	Domestic	ITH, duty-free importation
RBE 4	Poultry breeder	Domestic	ITH, enhanced deductions, duty-free importation
RBE 5	New producer of female GP (Grand Parent) breeder	Domestic	ITH, enhanced deductions, duty-free importation
RBE 6	New export producer of organic/non-organic plant-based Infused coconut drinks and juices	Export	ITH, enhanced deductions, VAT, and duty-free importation
RBE 7	New export producer of pasteurized chilled crabmeat	Export	ITH, SCIT, VAT and duty-free importation, VAT zero-rating on local goods and services
RBE 8	New producer of broiler chicken	Domestic	ITH, enhanced deductions, duty-free importation
RBE 9	New export producer of banana chops	Export	ITH, SCIT, VAT and duty-free importation, VAT zero-rating on local goods and services
RBE 10	New producer of hogs under contract breeding scheme (Piglets)	Domestic	ITH, enhanced deductions, duty-free importation
RBE 11	New producer of animal feeds	Domestic	ITH, enhanced deductions, duty-free importation
RBE 12	New producer of animal feeds	Domestic	ITH, enhanced deductions, duty-free importation
RBE 13	New export producer of banana chips	Export	ITH, SCIT, VAT and duty-free importation, VAT zero-rating on local goods and services

Company name	Activity/Project description	Type of enterprise	Tax incentives granted
RBE 14	New export producer of banana chips	Export	ITH, SCIT, VAT and duty-free importation, VAT zero-rating on local goods and services

Note. Data gathered from the FIRB Secretariat.

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Implications of Republic Act No. 11534, Otherwise Known as the Corporate Recovery and Tax Incentives for Enterprises Act, on the Powers of the Investment Promotion Agencies in the Grant and Administration of Tax Incentives*

I. INTRODUCTION

Republic Act (RA) No. 11534, otherwise known as the Corporate Recovery and Tax Incentives for Enterprises Act or commonly referred to as "CREATE,"[1] was "Package 2"[2] of the Comprehensive Tax Reform Program[3] of then President Rodrigo Duterte's administration. Signed into law on March 26 and became effective on April 11, 2021,[4] to develop a more responsive and globally-competitive tax incentive regime that is performance-based, targeted, time-bound, and transparent[5] and to plug tax leakages through the rationalization of the fiscal

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[1] Enacted March 26, 2021.

[2] The first "package" was the Tax Reform for Acceleration and Inclusion (TRAIN), signed into law as Republic Act (RA) No. 10963 on December 19, 2017. According to the Department of Finance (DOF), "[reduced] income taxes for 99[%] of income taxpayers… It also raises significant revenues to fund… priority infrastructure programs to reduce poverty incidence from 21.6[%]in 2015 to 14[%] by 2022." See the DOF's page on Package 1: TRAIN at https://taxreform.dof.gov.ph/tax-reform-packages/p1-train/ (last accessed on January 4, 2023). Other "packages" already enacted are: "Tax Amnesty" (signed into law as RA No. 11213 on February 14, 2019), "Sin Taxes" (includes the Tobacco Tax Law RA 11346 signed July 25, 2019 and RA 11467 which amended the Tax Code to increase excise taxes on alcohol, vapes, and e-cigarettes). Other "packages" yet to be enacted are: "Mining Taxes," "Real Property Valuation Reform," "Passive Income and Financial Intermediary Taxation Act," and "Motor Vehicle Users Charge." The DOF's page on the Comprehensive Tax Reform Package (CTRP) may be accessed at https://taxreform.dof.gov.ph/ (last accessed on January 4, 2023).

[3] According to the DOF, the purpose of Comprehensive Tax Reform Program (CTRP) is to accelerate poverty reduction and to sustainably address inequality, towards the attainment of then President Rodrigo Duterte's promise of *tunay na pagbabago* (real change). By making the tax system simpler, fairer, and more efficient, additional—and a more sustainable stream of—revenues will be generated to make meaningful investments in the country's people and infrastructure.

[4] Fifteen days following publication in the Official Gazette on March 27, 2021.

[5] See Section 2 (B) of RA 11534, otherwise known as the Corporate Recovery and Tax Incentives for Enterprises Act (CREATE).

incentives granted to investors.[6] The CREATE Act seeks to establish the country as an attractive market for foreign investments, expand local businesses and pioneer industries, boost job creation for local workers, and promote investments in less-developed regions in the country (Prodent, 2021). The government reformed the country's incentives and tax system to deter investors and enterprises from abusing it and to make it more competitive in the region (Villanueva, 2020).

Accordingly, the CREATE Act expanded the functions of the Fiscal Incentives Review Board (FIRB) to exercise policy-making and oversight functions in relation to the administration of tax incentives in the country, ensuring that tax incentives are properly granted and monitored. The FIRB, as reconstituted, is composed of the Secretaries of the Departments of Finance and Trade and Industry, who sit as co-chairpersons, and three members consisting of (a) the Executive Secretary of the Office of the President; (b) the Secretary of Budget and Management; and (c) the National Economic and Development Authority (NEDA) Director General. The law also provided that the FIRB secretariat shall be staffed by the National Tax Research Center (NTRC) and headed by an Assistant Secretary of Finance.[7] To support the expanded functions of the FIRB, the NTRC was mandated to create three additional groups: the Fiscal Incentives Management Group, the Monitoring and Evaluation Group, and the Legal Group.[8]

Due to the reorganization brought about by the passage of the CREATE Act, this study assesses the implications of the new law and, consequently, the expanded powers of the FIRB on investment promotion agencies (IPAs) in the grant and administration of tax incentives.

II. BACKGROUND

A. Investment Promotion Agencies

As defined in Section 293 (H) of the Tax Code, as amended by the CREATE Act, IPAs are government entities "in charge of promoting investments, granting and administering tax and non-tax incentives, and overseeing the operations of the different economic zones and freeports in accordance with their respective special laws."

As of December 15, 2022, there are 14 IPAs in the Philippines. These are:

(a) Authority of the Freeport Area of Bataan (AFAB);
(b) Aurora Pacific Economic Zone and Freeport (APECO);
(c) Bases Conversion and Development Authority (BCDA);

[6] As stated in the Veto Message for RA No. 11534.

[7] See Section 298 of the National Internal Revenue Code of 1997 (Tax Code), as amended by the CREATE Act.

[8] See Section 299 of the Tax Code, as amended by the CREATE Act.

(d) Board of Investments (BOI);
(e) Clark Development Corporation (CDC);
(f) Cagayan Economic Zone Authority (CEZA);
(g) John Hay Management Corporation (JHMC);
(h) Philippine Economic Zone Authority (PEZA);
(i) PHIVIDEC Industrial Authority (PIA);
(j) Poro Point Management Corporation (PPMC);
(k) Regional Board of Investments-Bangsamoro Autonomous Region in Muslim Mindanao (RBOI-BARMM);
(l) Subic Bay Metropolitan Authority (SBMA);
(m) Tourism Infrastructure and Enterprise Zone Authority (TIEZA); and
(n) Zamboanga City Special Economic Zone Authority and Freeport (ZCSEZA).

Each of the IPAs was created by law and as such, is governed by its own charter.

B. Grant and Administration of Tax Incentives Prior to the CREATE Act

Prior to the CREATE Act, each IPA granted different fiscal and non-fiscal incentives[9] to its registered business enterprises (RBEs) as authorized and empowered through various special legislations.[10] The incentives, as well as their terms and

[9] The Senate Tax Study and Research Office (2016, p. 3) defines "non-fiscal incentives" as "various non-tax inducements, whose purpose is mainly to facilitate the creation and execution of a project's operational and organizational structures rather than to provide tax relief and other privileges that directly improve earnings."

[10] For context, charters of Investment Promotion Agencies (IPAs) include: RA 9400, Entitled "An Act Amending Republic Act No. 7227, as Amended, Otherwise Known as the Bases Conversion and Development Act of 1992, and for Other Purposes" (July 24, 2006); RA 9593, Entitled "An Act Declaring a National Policy for Tourism as an Engine of Investment, Employment, Growth and National Development, and Strengthening the Department of Tourism and its Attached Agencies to Effectively and Efficiently Implement That Policy, and Appropriating Funds Therefor" (May 12, 2009); RA 9490, Entitled "An Act Establishing the Aurora Special Economic Zone in the Province of Aurora, Creating for the Purpose the Aurora Special Economic Zone Authority, Appropriating Funds Therefor and for Other Purposes" (February 19, 2007); RA 7903, Entitled "An Act Creating a Special Economic Zone and Free Port in the City of Zamboanga Creating for this Purpose the Zamboanga City Special Economic Zone Authority, Appropriating Funds Therefor, and for Other Purposes" (February 23, 1995); RA 7922, Entitled "An Act Establishing a Special Economic Zone and Free Port in the Municipality of Santa Ana and the Neighboring Islands in the Municipality of Aparri, Province of Cagayan, Providing Funds Therefor, and for Other Purposes" (July 25, 1994); RA 7916, Entitled "An Act Providing for the Legal Framework and Mechanisms for the Creation, Operation, Administration, and Coordination of Special Economic Zones in the Philippines, Creating for this Purpose, the Philippine Economic Zone Authority (PEZA), and for Other Purposes" (February 24, 1995); RA 9728, Entitled "An Act Converting the Bataan Economic Zone Located in the Municipality of Mariveles, Province of Bataan, into the Freeport Area of Bataan (FAB), Creating for this Purpose the Authority of the Freeport Area of Bataan (AFAB), Appropriating Funds Therefor and for Other Purposes" (July 27, 2009); Executive Order (EO) No. 458, Entitled "Devolving the Powers and Functions of the Board of Investments Over Investments within the Autonomous Region in Muslim Mindanao to the Autonomous Regional Government and for Other Purposes" (May 17, 1991); Presidential Decree (PD) No. 538, Entitled "Creating and Establishing the PHIVIDEC Industrial Authority and Making it a Subsidiary Agency of the Philippine Veterans Investment Development Corporation, Defining its Powers, Functions and

duration, varied depending on the IPA where the business enterprise is registered. Including laws on special economic zones, there are more than 190 laws[11] granting fiscal incentives with different sets of incentives (Senate Tax Study and Research Office, 2016, p.5). Most incentives were perpetual in nature, the grant of which did not require the conduct of cost-benefit analyses (CBA). The IPAs had autonomy in granting incentives to qualified enterprises, subject only to the limitations set forth in their respective charters and special laws.

In an International Monetary Fund (IMF) Working Paper, the incentive system in the Philippines was characterized as susceptible to lobbying, political pressure, and, at the very least, the impression of impropriety, which adversely affected investor confidence and the overall investment climate (Chalk, 2001, p. 20).

As of April 11, 2021, there were 5,520 RBEs registered with different IPAs. The FIRB data showed that locators within the ecozones of JHMC and PIA that were granted tax incentives were registered either with the BOI or PEZA. The number of RBEs did not correspond to the total number of registered activities since some RBEs have multiple registered projects or activities, as shown in Table 1 below.

Table 1

Number of Registered Business Enterprises and Their Respective Registered Activities Prior to the Effectivity of the CREATE Act as of April 11, 2021

IPA	No. of RBEs[12]	No. of activities per market orientation				Total no. of registered activities
		Domestic	Export	Mixed	No data	
AFAB	148	74	73	1	-	148
APECO	7	-	2	4	1	7
BCDA	4	1	3	-	-	4
BOI	645	1,171	75	2	6	1,254
CDC	456	127	58	58	-	457
CEZA	97	80	17	-	-	97
JHMC	-	-	-	-	-	-

Responsibilities, and for Other Purposes" (August 13, 1974); EO No. 80, Entitled "Authorizing the Establishment of the Clark Development Corporation as the Implementing Arm of the Bases Conversion and Development Authority for the Clark Special Economic Zone, and Directing All Heads of Departments, Bureaus, Offices, Agencies and Instrumentalities of Government to Support the Program", (April 03, 1993); and EO 226, Entitled "The Omnibus Investments Code of 1987", (July 16, 1987).

[11] For example, special laws include: PD 705, Entitled "Revising Presidential Decree No. 389, Otherwise Known as The Forestry Reform Code of The Philippines" (May 19, 1975); RA 9497, Entitled "An Act Creating the Civil Aviation Authority of the Philippines, Authorizing the Appropriation of Funds Therefor, and For Other Purposes" (March 4, 2008); RA 8047, Entitled "An Act Providing For The Development of The Book Publishing Industry Through The Formulation And Implementation of A National Book Policy and A National Book Development Plan", (June 7, 1995).

[12] There are 16 registered business enterprises (RBEs) that have registered activities with two IPAs.

IPA	No. of RBEs[12]	No. of activities per market orientation				Total no. of registered activities
		Domestic	Export	Mixed	No data	
PEZA	3,267	24	5,823	2,028	-	7,875
PHIVIDEC	-	-	-	-	-	-
PPMC	8	8	-	-	-	8
RBOI	5	3	2	-	-	5
SBMA	871	504	147	223	-	874
TIEZA	9	9	-	-	-	9
ZCSEZA	3	-	1	2	-	3
Total	**5,520**	**2,001**	**6,415**	**2,318**	**7**	**10,741**

Source: FIRB Data (as of April 11, 2021)

C. Functions and Powers of the FIRB Prior to the CREATE Act

The FIRB was created by virtue of Presidential Decree (PD) No. 776[13] as an interagency body composed of the Secretary of Finance as Chairman, and the Secretary of Industry, the Director General of NEDA, the Commissioner of Internal Revenue, and the Commissioner of Customs as members. Its purpose was to determine what subsidies and tax exemptions should be withdrawn, revoked, or suspended. In accordance with Memorandum Order No. 23, s. 1986,[14] the composition of the FIRB was expanded to include the Secretary of Budget and Management and the Director of the NTRC as additional members.

When the tax exemptions of government and private entities were withdrawn by PDs 1931[15] and 1955,[16] respectively, the FIRB was subsequently tasked to review, given certain parameters, which of these withdrawn tax privileges may be restored.

Executive Order (EO) No. 93[17] generally withdrew government and private entities' tax and duty exemption privileges. To maintain fiscal transparency, the EO

[13] Entitled, "Modifying All Laws, Acts, Decrees, Orders and Ordinances Granting Subsidies, Exemptions from Taxes, Duties, Fees, Imposts and Other Charges Under Certain Exceptions and Creating a Fiscal Incentives Board", (August 24, 1975).

[14] Entitled, "Expanding the Membership of the Fiscal Incentives Review Board (FIRB)", (July 15, 1986).

[15] Entitled, "Directing the Rationalization of Duty and Tax Exemption Privileges Granted to Government-Owned Or-Controlled Corporations and All Other Units of Government", (June 11, 1984).

[16] Entitled, "Withdrawing, Subject to Certain Conditions, the Duty and Tax Privileges Granted to Private Business Enterprises and/or Persons Engaged in Any Economic Activity, and for Other Purposes", (October 15, 1984).

[17] Entitled, "Withdrawing All Tax and Duty Incentives, Subject to Certain Exceptions, Expanding the Powers of the Fiscal Incentives Review Board and for Other Purposes", (December 17, 1986).

established a system of subsidies[18] - administered by the FIRB[19] - to cover the tax and duty responsibilities of affected government entities.

III. IMPLICATIONS

A. FIRB vis-à-vis IPAs' Authority in the Administration of Tax Incentives

With the passage of the CREATE Act, the functions and powers of the FIRB were expanded from administering tax subsidies to serving as a central policy-making body and administrator for the grant of tax incentives by IPAs to RBEs. This is the primary role of the FIRB in the fiscal incentives system of the Philippines—to exercise policy-making and oversight functions over all RBEs and IPAs, regardless of whether the set of incentives of an RBE was granted either by the FIRB or the concerned IPA based on the investment threshold.[20]

To illustrate, at the height of the COVID-19 pandemic, the public and private sectors adopted work-from-home (WFH) and skeleton workforce schemes as part of national health and safety protocols. However, the implementation of the WFH scheme by RBEs located within different economic zones in the Philippines conflicts with the mandate of the Tax Code, as amended by the CREATE Act, specifically Section 309, which restricts the conduct or operation of the projects or activities exclusively within the geographical boundaries of the zone or freeport being administered by the IPA in which the project or activity is registered. In relation thereto, the FIRB issued Resolution Nos. 19-21,[21] 17-22,[22] and

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[18] Subsidy given to national government agencies, government-owned and -controlled corporations, government instrumentalities, and state universities and colleges, and other government entities as may be provided under the annual General Appropriations Act, in lieu of payment of taxes and customs duties, chargeable against tax expenditures fund.

[19] Section 1, Rule II of the Rules and Regulations to Implement the Subsidy Provision Under Executive Order No. 93 (January 1, 1986) provides as follows:

> SECTION 1. The FIRB created under Presidential Decree No. 776, as amended, shall meet regularly at least once a month, or oftener at the call of the Chairman, to discharge the following functions:
> (a) To **act on applications for availment of subsidies by qualified Beneficiaries**; and
> (b) To require the assistance and cooperation of any appropriate Government and Private Entities in the discharge of its functions. *(emphasis supplied)*

[20] In the Veto Message for RA No. 11534 for a portion Section 16 of the CREATE Act (which refers to Section 297(O) of the Tax Code), former President Rodrigo Duterte stated that "[t]he functions of the Fiscal Incentives Review Board [(FIRB)] under Section 297(A)(1) and (5), (E), (G), (H), (J), and (K) shall be exercised in relation to the grant of tax incentives to registered projects or activities with the total investment capital of more than one billion pesos (P1,000,000,000.00), as provided herein."

[21] Dated August 2, 2021.

[22] Dated June 21, 2022.

26-22,[23] as temporary measures under Rule 23 of the Implementing Rules and Regulations (IRR) of the CREATE Act, to allow RBEs particularly in the Information Technology and Business Process Management (IT-BPM) sector, most of which were registered with PEZA, to implement WFH arrangements for a certain period without adversely affecting their fiscal incentives.

Concomitant with its primary purpose, the FIRB is authorized to verify whether the incentives granted by the IPAs conform to the objective of the State to develop a more responsive and globally-competitive tax incentives regime that is performance-based, targeted, time-bound, and transparent.

Furthermore, it is now the function of the FIRB to approve or disapprove the grant of tax incentives, shifting the authority to the FIRB, which was once ultimately a power granted to IPAs. Although the FIRB only acts on applications for projects or activities with an investment capital of more than one billion pesos, legally speaking, applications with an investment capital of one billion pesos and below are acted upon by an IPA where the application is filed, based on a delegated authority.[24] Hence, the major effect of the CREATE Act on IPAs is on their power to grant incentives, which is now merely a delegated authority from the FIRB.

The FIRB, apart from its power to exercise policy-making and oversight functions and its power to grant fiscal incentives to registered projects or activities, also has the following functions and powers as provided under Section 297 of the Tax Code, as amended by the CREATE Act:

(a) To formulate place-specific strategic investment plans during periods of recovery from calamities and post-conflict situations and where the FIRB determines that there is a need to attract many classes, firms, that would accelerate the growth of a region's flagship industries, in accordance with the Medium-Term Development Plan;

(b) To cancel, suspend, or withdraw the enjoyment of fiscal incentives of concerned RBEs on its own initiative or upon the recommendation of the IPA for material violations of any of the conditions imposed in the grant of fiscal incentives;

(c) To require IPAs and other government agencies administering tax incentives to submit, regularly or when requested, summaries of approved investment and incentives granted, and firm- or entity-level tax incentives and benefits data as input to the FIRB's review and audit function, and evaluation of the performance of recipients of tax incentives;

(d) To decide on issues, on its own initiative or upon the recommendation of the IPA, after due hearing, concerning the approval, disapproval,

[23] Dated September 14, 2022.

[24] See Section 297 (B) of the Tax Code, as amended by the CREATE Act.

cancellation, suspension, withdrawal, or forfeiture of tax incentives or tax subsidy in accordance with the CREATE Act;

(e) To recommend to the President the grant of appropriate non-fiscal incentives in accordance with the Strategic Investment Priority Plan (SIPP) for highly desirable projects or very specific industrial activities; and

(f) To exercise all other powers necessary or incidental to attain the purposes of the CREATE Act and other laws vesting additional functions on the FIRB.

Be that as it may, even with the change in the authority to grant incentives, the IPAs remain to have a substantial influence on the approval or disapproval of tax incentives applications since the law requires the IPA's recommendation before the FIRB acts on the application.[25] They also retain the exclusive jurisdiction to register all projects or activities, regardless of the amount of investment capital, subject to compliance with the minimum standards under Part III, Rule 6, Section 2 of the Implementing Rules and Regulations (IRR) of the CREATE Act.[26] Registration of projects and grant of incentives covered by special laws not repealed by the CREATE Act shall likewise continue to be administered by the IPA vested with such authority.[27] Further, under Section 291 of the Tax Code, as amended by the CREATE Act, the IPAs maintain their functions and powers as provided under the special laws governing them, except to the extent modified.

B. Limitations in the Grant of Tax Incentives

As provided under Section 297 (B) of the Tax Code, as amended by the CREATE Act, applications for tax incentives are now required to be accompanied by a CBA.[28] The FIRB has provided a template for the CBA to ensure that the incentives are granted based on evidence and that all projects are systematically evaluated based on a defined set of metrics. The CBA includes details on the projected net tax revenue, projected total development business cost induced, and employment creation, including potential spillover employment, innovation and use of new technology, and other externalities such as the effect on incomes and productivity of other members of society, quality of land, water, and/or air, public health, and stimulation of forward or

[25] See Section 297 (B) of the Tax Code, as amended by the CREATE Act.

[26] Section 2 of Rule 6 under Part III refers to "Qualifications for Registration."

[27] See Section 5 of Rule 5 under Part III of the Implementing Rules and Regulations of the CREATE Act (CREATE IRR).

[28] As defined under Section 306 of the Tax Code, as amended by the CREATE Act, "cost-benefit analysis" refers to the systematic evaluation of the total costs of granting tax incentives *vis-à-vis* the total benefits derived from the grant of tax incentives based on the annual tax incentive report, annual benefits report, and other related sources, to calculate the net benefit or cost associated with tax incentives.

backward linkages. The CBA also includes the determination of the project's viability, both with and without the tax incentives, and if the project is viable without tax incentives, the grant of fiscal incentives may potentially be considered redundant.[29]

Moreover, Section 304 provides for the additional qualifications in the review and grant of tax incentives, particularly, RBEs must: (a) be engaged in a project or activity included in the SIPP; (b) meet target performance metrics after an agreed time period; (c) install an adequate accounting system that identifies the investments, revenues, costs, and profits or losses of each registered project or activity undertaken by the enterprise separately from the aggregate investments, revenues, costs, and profits or losses of the whole enterprise; or establish a separate corporation for each registered project or activity if the IPA should so require; (d) comply with the e-receipting and e-sales requirement in accordance with Sections 237 and 237(a) of the Tax Code; and (e) submit annual reports of beneficial ownership of the organization and related parties.

C. Available Incentives and Period of Enjoyment

In line with the State's policy to develop a more responsive and globally-competitive tax incentives regime that is performance-based, targeted, time-bound, and transparent, the CREATE Act introduced a new Title XIII in the Tax Code, providing a set of tax incentives framed to be simpler, fairer, and more efficient. Sections 17 and 18 of the CREATE Act repealed and amended, respectively, certain provisions of the special laws governing the IPAs and the grant of incentives in the Philippines. Accordingly, the tax incentives that will be granted to RBEs, regardless of the IPA with which they are registered, are now uniform.

Section 294 of the Tax Code, in relation to other pertinent provisions, provides the following types of tax incentives that may be granted to registered projects or activities:

(a) Income Tax Holiday (ITH);

(b) Special Corporate Income Tax (SCIT) Rate of 5% based on the gross income earned (GIE) for export enterprises;

(c) Enhanced Deductions (ED);

(d) Duty exemption on importation of capital equipment, raw materials, spare parts, or accessories; and

(e) Value-Added Tax (VAT) exemption on importation and VAT zero-rating on local purchases of goods and services directly and exclusively used in the registered project or activity of export enterprises.

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[29] As stated in an FIRB Memorandum on the revised CBA scorecard and *ex-ante* CBA template addressed to all heads of the IPAs dated June 23, 2022.

Aside from the types of incentives available, the period of enjoyment was likewise provided in accordance with the goal of providing a time-bound tax incentive regime. The period of availment is based on the combination of both location and industry priorities, as determined in the SIPP.

Should exceptional circumstances occur,[30] Section 2, Rule 23, Part VI of the CREATE Act IRR provides that the concerned IPA shall implement "temporary measures," upon the approval of the FIRB,[31] to support the RBE's recovery and to strengthen the nation's capability for similar circumstances in the future. The temporary measures should cover a specific time period and should only be limited to the incentives approved by the IPA or the FIRB. This reinforces the authority of the FIRB over the administration of tax incentives, as temporary measures must first be approved by the FIRB before they can be implemented.

Considering that Title XIII of the Tax Code, as amended, effectively rationalized the grant of fiscal incentives, the IPAs no longer enjoy leverage over other agencies except for the non-fiscal incentives that they may grant.

D. Other Effects

The Fiscal Incentives Registration and Monitoring System (FIRMS)

The CREATE Act IRR[32] requires that registration applications be filed electronically through a system prescribed by the FIRB or through a system of an IPA which shall be interoperable with, and can be linked to, the FIRB system. Thus, on June 14, 2021, the FIRB launched the "Fiscal Incentives Registration and Monitoring System" (FIRMS)—an online registration and incentives application portal on the FIRB website—to provide a single-entry point for business enterprises to submit incentives applications and track their status to ensure uniformity in the processes. The FIRMS includes features specifically developed for the FIRB and IPAs to review, approve, reject, and monitor incentivized projects and activities.

The RBEs are required to first register via FIRMS when applying for tax incentives and those currently enjoying tax incentives. The RBEs without incentives may, and are even encouraged, to create an account with FIRMS as they will still form

[30] Exceptional circumstances include pandemic, epidemic, war, armed conflict, state of national emergency, outbreak of diseases, international or regional financial crisis, major disaster such as volcanic eruption, earthquake and super typhoon, or analogous circumstances. See Section 1, Rule 23 under Part VI of the CREATE IRR.

[31] The temporary measures shall, without diminution of incentives, cover all RBEs that are affected by such exceptional circumstance and may include any of the following: (a) Suspension of the export requirement; (b) Deferment of the income tax incentive availment period; (c) Movement of the start commercial operations with full entitlement to incentives under the terms and conditions of the registered project or activity; or (d) Adoption of any other measure as may be reasonable to recover from such circumstances, subject to FIRB approval upon the recommendation of the IPA.

[32] See Section 3 of Rule 6 under Part III.

part of the annual master lists as locators.[33] As of December 12, 2022, there are 805 verified FIRMS users, with 189 applications lodged. Forty-five applications were submitted to the IPA, including those approved, denied, and undergoing evaluation, while the remaining 144 applications were prepared by the RBE and have not been submitted to their respective IPAs.[34]

Reportorial Requirements

The CREATE Act also repealed Section 4 of RA 10708, otherwise known as the Tax Incentives Management and Transparency Act,[35] required RBEs to file a complete annual tax incentives report (ATIR)[36] with their IPAs within 30 days from the statutory deadline for filing tax returns and payment of taxes, and the IPAs to submit to the Bureau of Internal Revenue (BIR) their respective ATIRs based on the list of the RBEs who have filed the reports within 60 days from the statutory deadline for filing of the relevant tax returns.[37]

In its place, Section 305 of the Tax Code, as amended by the CREATE Act, requires IPAs to collect from their RBEs: (a) a complete ATIR of their income-based tax incentives, VAT exemptions, and zero-rating, customs duty exemptions, deductions, credits or exclusions from the income tax base, and exemptions from local taxes; and (b) a complete annual benefits report (ABR) which shall include data such as but not limited to, the approved and actual amount of investments, approved and actual employment level and job creation including information on the quality of jobs and hiring of foreign and local workers, approved and actual exports and imports, domestic purchases, profits and dividend payout, all taxes paid, withheld, and foregone. Copies of the reports are required to be simultaneously submitted to the FIRB.

Within 60 calendar days from the end of the statutory deadline for filing the relevant tax returns, the IPAs must submit to the BIR their ATIRs based on the RBEs that have filed the tax incentives reports.

The IPAs are required to submit to the FIRB, per firm- and per registered project- or activity-level: data on tax incentives based on the submissions of registered business enterprises and other registered enterprises and other investment- and non-investment-related data for purposes of conducting an impact evaluation on tax

[33] See Annex A of FIRB Advisory No. 004-2022 (June 01, 2022).

[34] As found in the highlights of FIRB Secretariat Accomplishments for calendar year (CY) 2022.

[35] Enacted July 27, 2015.

[36] The annual tax incentive report is a report of income-based tax incentives, value-added tax and duty exemptions, deductions, credits or exclusions from the tax base as provided in the charter of the IPA concerned.

[37] Section 17 (e) of the CREATE Act.

incentives on the Philippine economy and the relevant sector. The FIRB will generate the reports upon the establishment of the reporting system in the FIRMS.[38]

The IPAs are also required to submit to the FIRB, within 10 days after the end of each month, a list of projects or activities with investment capital of one billion pesos and below that were granted tax incentives. The list shall include the names of the firms, registered projects or activities, location of the registered projects or activities, Certificates of Registration numbers, amounts of investment capital, and types of tax incentives granted.

In addition, they are required to submit to the FIRB within 90 days after the statutory deadline for filing the annual income tax return for RBEs with investment capital of more than one billion pesos and within 180 days after the statutory deadline for filing the annual income tax return for registered entities with investment capital of one billion pesos and below, a report on the compliance of RBEs with the terms and conditions imposed for registration and availment of tax incentives.[39]

The Strategic Investment Priority Plan

Section 17 (D)(1) of the CREATE Act repealed Articles 7 (1) and 21 of EO 226,[40] otherwise known as the Omnibus Investments Code of 1987, which mandated the BOI to prepare and submit, after consultation with the appropriate government agencies and the private sector, an Investment Priorities Plan[41] (IPP) containing a listing of specific activities that can qualify for incentives, duly supported by the studies of existing and prospective demands for such products and services in the light of the level and structure of income, production, trade, prices and relevant economic and technical factors of the regions as well as existing facilities.

Now, under Section 300 of the Tax Code, as amended by the CREATE Act, the BOI must coordinate with the FIRB, IPAs, other government agencies

[38] See Section 307 of the Tax Code, as amended by the CREATE Act, and Section 4 of Rule 11 under Part IV of the CREATE IRR. Part IV refers to “Tax Incentives Management and Transparency.” As of September 30, 2022, 11 out of 14 IPAs have submitted their consolidated ATIR and ABR.

[39] See Section 7 of Rule 8 under Part III of the CREATE IRR.

[40] Signed July 16, 1987.

[41] Article 26 of Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, defines “Investment Priorities Plan” as the over-all plan prepared by the Board of Investments which includes and contains: (a) The specific activities and generic categories of economic activity wherein investments are to be encouraged and the corresponding products and commodities to be grown, processed or manufactured pursuant thereto for the domestic or export market; (b) Specific public utilities which can qualify for incentives under this Code and which shall be supported by studies of existing and prospective regional demands for the services of such public utilities in the light of the level and structure of income, production, trade, prices and relevant economic and technical factors of the regions as well as the existing facilities to produce such services; (c) Specific activities where the potential for utilization of indigenous no-petroleum based fuels or sources of energy can be best promoted; and (d) Such other information, analyzes, data, guidelines or criteria as the Board may deem appropriate.

administering tax incentives, and the private sector in formulating the SIPP, which shall contain priority projects or activities that are included in the Philippine Development Plan or its equivalent, or other government programs, scope, and coverage of location and industry tiers in Section 296 of the Tax Code, terms and conditions on the grant of enhanced deductions under Section 294(C), recommendations for non-fiscal support and corresponding specific activities wherein investments are to be encouraged, and other information, analyses, data, guidelines, or criteria as the BOI may deem appropriate.[42]

Establishment of One-Stop Action Center

Section 310 of the Tax Code, as amended by the CREATE Act, requires IPAs to establish a one-stop shop or one-stop action center that will facilitate and expedite, to the extent possible, the setting up and conduct of registered projects or activities, including assistance in coordinating with the local government units and other government agencies to comply with RA 11032, otherwise known as the Ease of Doing Business and Efficient Government Service Delivery Act of 2018. The CREATE Act IRR requires that this be established within one year from the effectivity of the IRR, subject to budgetary support and available resources.[43]

Compliance Monitoring by the FIRB

In accordance with the oversight functions over the administration and granting of tax incentives by the IPAs, the FIRB may conduct an inspection, check, or audit of the records and operations of the IPA, to monitor the IPA's statutory and regulatory compliance.

On August 4, 2022, the FIRB issued Resolution No. 023-22 authorizing the FIRB Secretariat to check and validate the processes and data collected by the IPAs, which may be conducted onsite or within the office of the IPA. This would include the IPA's conduct of performance audits and monitoring of RBEs, including the supporting documents, and the IPA's approval process for projects and sample terms and conditions.

IV. CONCLUSION

Prior to the CREATE Act, the IPAs had wider latitude and greater autonomy in granting and administering incentives. With the passage of the CREATE Act, the Philippine incentive system was streamlined and integrated under a single statute to be administered by one government entity, the FIRB, with IPAs, merely acting under a delegated authority. The IPAs

[42] See Section 4 (DD) of Rule 1 of the CREATE IRR.

[43] See Rule 20 under Part VI of the CREATE IRR.

were tasked with additional responsibilities in the form of additional report submissions, monitoring of RBEs' performance commitments, and establishment of new processes.

While all these would eventually generate more data for the formulation of better policies, restore public confidence in the tax incentive system, and ultimately keep track of the revenues foregone *vis-à-vis* the benefits realized, on an institutional level, all these additional duties also affect the promotion schemes of the IPAs in attracting potential investors to register with their agency—the main thrust of IPAs. Still, it is apparent that the IPAs now have a greater role in ensuring that the country's objectives are realized.

As discussed, the new incentive regime under the CREATE Act is projected to attract domestic and foreign investments to boost the economy, improve the quality of life in the Philippines, and enhance the country's global competitiveness. As of December 2022, or about a year and eight months from the effectivity of the law, the FIRB has approved 17 projects with a total investment capital of P414,250,366,875 and a direct employment commitment of 4,613 employees. The IPAs, on the other hand, have approved, pursuant to their delegated authority under the CREATE Act, 579 projects with a total investment capital of P139,024,751,452.

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LEGISLATION AND ISSUANCES WITH IMPLICATIONS
January - February 2023

EXECUTIVE ORDER (EO)

Legislation	Subject	Date of Issue	Date of Effectivity
EO 18	Constituting Green Lanes for Strategic Investments	February 23, 2023	Immediately upon publication in the Official Gazette or in a newspaper of general circulation

REPUBLIC ACT (RA)

Legislation	Subject	Date of Issue	Date of Effectivity
RA 11938	Converting the Municipality of Carmona in the Province of Cavite Into a Component City to Be Known as the City of Carmona	February 23, 2023	Fifteen days after its publication in the Official Gazette or in a newspaper of general circulation

REVENUE REGULATIONS (RR)

Issuance	Subject	Date of Issue	Date of Effectivity
RR 1-2023	Implementing the Ten Percent (10%) Discount and the Value-Added Tax (VAT) Exemption under Republic Act No. 11861 or the "Expanded Solo	January 18, 2023	Fifteen days after publication in the Official

Issuance	Subject	Date of Issue	Date of Effectivity
	Parents Welfare Act"		Gazette or newspaper of general circulation, whichever comes first

REVENUE MEMORANDUM ORDER (RMO)

Issuance	Subject	Date of Issue	Date of Effectivity
RMO 1-2023	Creating the Alphanumeric Tax Code (ATC) for Excise Taxes and Tobacco Inspection Fees on Novel Tobacco Products	January 5, 2023	Immediately
RMO 6-2023	Updated and Consolidated Policies, Guidelines, and Procedures for BIR Audit Program	December 1, 2022	January 1, 2023
RMO 7-2023	Policies, Guidelines, and Procedures in the Processing and Monitoring of One-Time Transactions (ONETT) and Issuance of Electronic Certificate Authorizing Registration (eCAR) Thru the eONETT System	February 23, 2023	Immediately

REVENUE MEMORANDUM CIRCULAR (RMC)

Issuance	Subject	Date of Issue	Date of Effectivity
RMC 3-2023	Prescribing the Policies and Guidelines on the Online Registration of Books of Accounts	January 10, 2023	-

Issuance	Subject	Date of Issue	Date of Effectivity
RMC 4-2023	Clarification of the Base Amount for the Imposition of the Twenty Percent (20%) Penalty Relative to the Early Withdrawal of Personal Equity and Retirement Account (PERA) for Assets, Accounts and Sub Accounts Classified as Unqualified	January 10, 2023	-
RMC 5-2023	Providing Transitory Provisions for the Implementation of the Quarterly Filing of VAT Returns Starting January 1, 2023, Pursuant to Section 114(A) of the National Internal Revenue Code of 1997 (Tax Code), as Amended by RA 10963, Otherwise Known as the "Tax Reform for Acceleration or Inclusion" or the "TRAIN Law"	January 13, 2023	-
RMC 8-2023	Revised Provisions on the Submission of Inventory List and Other Reporting Requirements Pursuant to RMC No. 57-2015	January 20, 2023	Immediately
RMC 9-2023	Circularizing the Availability of Revised BIR Form Nos. 1606 and 1706 Version January 2018	January 26, 2023	-
RMC 10-2023	Use of the Electronic One-Time Transaction (eONETT) System by Sellers Habitually Engaged in the Sale of Real Properties	January 26, 2023	-
RMC 12-2023	Availability of Online Applications for Registration Information Updates and Other Online Facilities for Registration-Related Transactions Through Online Registration and Update System (ORUS)	January 27, 2023	-
RMC 15-2023	Publishing the Full Text of Memorandum Circular No. 2023-001 by the Board of Investments (BOI)	February 3, 2023	-

Issuance	Subject	Date of Issue	Date of Effectivity
RMC 17-2023	Publishing Fiscal Incentives Review Board (FIRB) Advisory No. 002-2023-Templates for the Certificate of Entitlement to Tax Incentives (CETI)	February 6, 2023	-
RMC 18-2023	Publishing the Full Text of Fiscal Incentives Review Board (FIRB) Administrative Order No. 001-2023 Prescribing the Supplemental Guidelines to Operationalize FIRB Resolution No. 026-22 dated 14 September 2022, as Further Extended by FIRB Resolution No. 033-22 dated 23 December 2022	February 6, 2023	-
RMC 19-2023	Publishing the Full Text of the January 4, 2023 Letter from the Food and Drug Administration of the Department of Health Endorsing Updates to the List of VAT-Exempt Products under Republic Act No. 10963 (TRAIN Law) and RA No. 11534 (CREATE Act)	February 6, 2023	-
RMC 20-2023	Clarifying the Provision of Section 5 of RMC 063-22 Pertaining to the Application of the Three (3) Primary Taxable Bases in Applying the Excise Tax Rates for Automobiles	February 8, 2023	Immediately
RMC 21-2023	Clarification and Guidance on Section 5 of RR No. 18-2021 on the Posting of Export Bond Prior to Removal of Tobacco Products, Heated Tobacco Products, and Vapor Products for Export From Place of Manufacture	February 16, 2023	Immediately
RMC 24-2023	Provides Further Clarifications on the Qualifications of Ecozone Logistics Service Enterprise (ELSE) to the Incentives of VAT-Zero Rate on Local Purchases of Goods and Services Exclusively and Directly Used in the Registered Project or Activity	February 17, 2023	Immediately

Issuance	Subject	Date of Issue	Date of Effectivity
RMC 25-2023	Circularizing Republic Act No. 11314, Entitled "An Act Institutionalizing the Grant of Student Fare Discount Privileges on Public Transportation and for Other Purposes"	February 20, 2023	-
RMC 26-2023	Circularizing the Updated List of Accredited Microfinance Non-Government Organizations (NGOs) as of January 2023	February 27, 2023	-

CUSTOMS MEMORANDUM ORDER (CMO)/MEMORANDUM CIRCULAR (CMC)/ADMINISTRATIVE ORDER (CAO)

Issuance	Subject	Date of Issue	Date of Effectivity
CMO 02-2023	Implementation of Department of Trade and Industry (DTI) Department Administrative Order No. 22-13 s. of 2022 on the Imposition of Definitive General Safeguard Measures on Imported High-Density Polyethylene (HDPE) Pellets and Granules From Various Countries (AHTN 2017 Code 3901.20.00)	January 11, 2023	Immediately
BOC-AOCG (Assessment and Operations Coordinating Group) Memorandum No. 48-2023	Clearance Is Not Required From DENR-EMB for the Importation of granulated blast furnace slag to be used as raw material in cement manufacturing	January 20, 2023	-

Issuance	Subject	Date of Issue	Date of Effectivity
CAO 01-2023	Amendment to CAO No. 02-2022 on the Rules and Regulations in the Implementation of the Actual Time of Arrival (ATA) System in the Philippines	February 6, 2023	Immediately after its complete publication in the Official Gazette or a newspaper of general circulation
CMC 26-2023	EO No. 10, series of 2022, on "Extending the Temporary Modification of Rates of Import Duty on Various Products Under Section 1611 of Republic Act No. 10863, Otherwise Known as the Customs Modernization and Tariff Act" and EO No. 13, series of 2023 on "Maintaining the Temporary Modification of Rates of Import Duty on Certain Agricultural Products under Section 1611 of Republic Act No. 10863, Otherwise Known as the Customs Modernization and Tariff Act"	February 8, 2023	Immediately

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