

# 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,”<sup>1</sup> was “Package 2”<sup>2</sup> of the Comprehensive Tax Reform Program<sup>3</sup> of then President Rodrigo Duterte’s administration. Signed into law on March 26 and became effective on April 11, 2021,<sup>4</sup> to develop a more responsive and globally-competitive tax incentive regime that is performance-based, targeted, time-bound, and transparent<sup>5</sup> and to plug tax leakages through the rationalization of the fiscal

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<sup>1</sup> Enacted March 26, 2021.

<sup>2</sup> 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).

<sup>3</sup> 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.

<sup>4</sup> Fifteen days following publication in the Official Gazette on March 27, 2021.

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

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incentives granted to investors.<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup>

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);

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<sup>6</sup> As stated in the Veto Message for RA No. 11534.

<sup>7</sup> See Section 298 of the National Internal Revenue Code of 1997 (Tax Code), as amended by the CREATE Act.

<sup>8</sup> 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<sup>9</sup> to its registered business enterprises (RBEs) as authorized and empowered through various special legislations.<sup>10</sup> The incentives, as well as their terms and

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<sup>9</sup> 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.”

<sup>10</sup> 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<sup>11</sup> 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 <sup>12</sup>	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).

<sup>11</sup> 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).

<sup>12</sup> There are 16 registered business enterprises (RBEs) that have registered activities with two IPAs.

IPA	No. of RBEs <sup>12</sup>	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
<b>Total</b>	<b>5,520</b>	<b>2,001</b>	<b>6,415</b>	<b>2,318</b>	<b>7</b>	<b>10,741</b>

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<sup>13</sup> 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,<sup>14</sup> 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<sup>15</sup> and 1955,<sup>16</sup> 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<sup>17</sup> generally withdrew government and private entities' tax and duty exemption privileges. To maintain fiscal transparency, the EO

<sup>13</sup> 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).

<sup>14</sup> Entitled, "Expanding the Membership of the Fiscal Incentives Review Board (FIRB)", (July 15, 1986).

<sup>15</sup> 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).

<sup>16</sup> 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).

<sup>17</sup> 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<sup>18</sup> - administered by the FIRB<sup>19</sup> - 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.<sup>20</sup>

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,<sup>21</sup> 17-22,<sup>22</sup> and

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<sup>18</sup> 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.

<sup>19</sup> 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*)

<sup>20</sup> 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.”

<sup>21</sup> Dated August 2, 2021.

<sup>22</sup> Dated June 21, 2022.

26-22,<sup>23</sup> 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.<sup>24</sup> 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,

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<sup>23</sup> Dated September 14, 2022.

<sup>24</sup> 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.<sup>25</sup> 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.<sup>26</sup> 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.<sup>27</sup> 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.<sup>28</sup> 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

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<sup>25</sup> See Section 297 (B) of the Tax Code, as amended by the CREATE Act.

<sup>26</sup> Section 2 of Rule 6 under Part III refers to "Qualifications for Registration."

<sup>27</sup> See Section 5 of Rule 5 under Part III of the Implementing Rules and Regulations of the CREATE Act (CREATE IRR).

<sup>28</sup> 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.<sup>29</sup>

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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<sup>29</sup> 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,<sup>30</sup> 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,<sup>31</sup> 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<sup>32</sup> 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

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<sup>30</sup> 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.

<sup>31</sup> 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.

<sup>32</sup> See Section 3 of Rule 6 under Part III.

part of the annual master lists as locators.<sup>33</sup> 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.<sup>34</sup>

### *Reportorial Requirements*

The CREATE Act also repealed Section 4 of RA 10708, otherwise known as the Tax Incentives Management and Transparency Act,<sup>35</sup> required RBEs to file a complete annual tax incentives report (ATIR)<sup>36</sup> 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.<sup>37</sup>

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

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<sup>33</sup> See Annex A of FIRB Advisory No. 004-2022 (June 01, 2022).

<sup>34</sup> As found in the highlights of FIRB Secretariat Accomplishments for calendar year (CY) 2022.

<sup>35</sup> Enacted July 27, 2015.

<sup>36</sup> 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.

<sup>37</sup> 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.<sup>38</sup>

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.<sup>39</sup>

### *The Strategic Investment Priority Plan*

Section 17 (D)(1) of the CREATE Act repealed Articles 7 (1) and 21 of EO 226,<sup>40</sup> 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<sup>41</sup> (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

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<sup>38</sup> 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.

<sup>39</sup> See Section 7 of Rule 8 under Part III of the CREATE IRR.

<sup>40</sup> Signed July 16, 1987.

<sup>41</sup> 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.<sup>42</sup>

#### *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.<sup>43</sup>

#### *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

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<sup>42</sup> See Section 4 (DD) of Rule 1 of the CREATE IRR.

<sup>43</sup> 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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