

'22 SEP 14 P 6:45

SENATE

P.S.R. No. 219

RECEIVED BY: 

INTRODUCED BY SENATOR RISA HONTIVEROS

RESOLUTION

CALLING FOR THE SENATE TO CONVENE THE CONGRESSIONAL OVERSIGHT COMMITTEE ON THE COMPREHENSIVE TAX REFORM PROGRAM FOR THE PURPOSE OF REMEDYING THE APPARENT INCONSISTENCY BETWEEN THE CREATE LAW AND ITS IMPLEMENTING RULES AND REGULATIONS

WHEREAS, Republic Act (R.A.) No. 11534, otherwise known as the Corporate Recovery & Tax Incentives for Enterprises ("CREATE") Law, took effect on April 11, 2021;

WHEREAS, the CREATE Law reduced the corporate income tax rate, and rationalized the grant of fiscal incentives by unifying the numerous benefits conferred by prior legislation;

WHEREAS, among others, the CREATE Law granted all covered enterprises exemption from the Value-Added Tax ("VAT") on their importations as well as a zero-rating on their domestic purchases;

WHEREAS, Section 295 (D) of the National Internal Revenue Code ("NIRC"), which was amended by the CREATE Law, governs the grant of tax incentives, including those for VAT-exemption and zero-rating:

(D) The VAT exemption on importation and VAT zero-rating on local purchases shall only apply to goods and services directly and exclusively used in the registered project or activity by a registered business enterprise.

xxx

WHEREAS, on June 21, 2022, the CREATE Law's Implementing Rules & Regulations ("IRR") were approved, and jointly signed, by the Departments of Finance and Trade & Industry;

WHEREAS, Section 5 of the CREATE Law's IRR modifies the rules governing VAT-exemption and zero-rating by limiting the scope of the said tax incentive to good and services directly and exclusively used by a registered export enterprise:

SECTION 5. Value-Added Tax (VAT) zero-rating and exemption. – The VAT Exemption on importation and VAT zero-rating on local purchases shall only apply to goods and services directly and exclusively used in the registered project or activity of export enterprises, for a maximum period of seventeen (17) years from the date of registration, unless otherwise extended under the SIPP.

WHEREAS, on December 3, 2021, the Bureau of Internal Revenue ("BIR") issued Revenue Regulations No. 21-2021, which amended previous issuances and provided the guidelines for the implementation of Sections 249 (E) and 295 (D) of the NIRC, as

amended by the CREATE Law, adopted the interpretation contained in the said law's IRR:

(c) Sale of raw materials, inventories, supplies, equipment, packaging materials, and goods, to a registered export enterprise, to be used directly and exclusively in its registered project or activity xxx

xxx

(3) Sale of services, including provision of basic infrastructure, utilities, and maintenance, repair and overhaul of equipment, to a registered export enterprise, to be used directly and exclusively in its registered project or activity xxx

WHEREAS, the interpretation contained in the aforementioned IRR as well as Revenue Regulations No. 21-2021 appears to be inconsistent with the language and spirit of NIRC Section 295 (D), as amended, which is to make VAT exemption on importation and zero-rating on domestic purchases available to both export and domestic enterprises;

WHEREAS, this interpretation of the CREATE Law has, in effect, cancelled the eligibility of all domestic enterprises registered with the country's Investments Promotion Agencies ("IPAs") to avail of the VAT exemption on importation, as well as VAT zero-rating on local purchases;

WHEREAS, as of August 24, 2022, the Fiscal Incentives Review Board ("FIRB") reported that there were 5,520 businesses registered with the various IPAs prior to the passage of the CREATE Law: 1,391 domestic enterprises, 3,232 export-oriented enterprises, and 895 mixed enterprises;

WHEREAS, taking these figures into account, the deviation of the aforementioned issuances from the intent of the CREATE Law has directly and adversely affected the cost of doing business for 212 domestic industries, while potentially discouraging other domestic firms from registering with IPAs; and

WHEREAS, it may be necessary to convene the Congressional Oversight Committee on the Comprehensive Tax Reform Program ("COCCTRP") for the purpose of remedying the apparent inconsistency between the CREATE Law and its IRR.

NOW THEREFORE, BE IT RESOLVED AS IT IS HEREBY RESOLVED TO CALL FOR SENATE TO CONVENE THE CONGRESSIONAL OVERSIGHT COMMITTEE ON THE COMPREHENSIVE TAX REFORM PROGRAM FOR THE PURPOSE OF REMEDYING THE APPARENT INCONSISTENCY BETWEEN THE CREATE LAW AND ITS IMPLEMENTING RULES AND REGULATIONS.

Adopted.


RISA HONTIVEROS
Senator