Policy Brief

SENATE ECONOMIC PLANNING OFFICE

August 2024 PB-24-04

Streamlining CREATE for Economic Competitiveness

For decades, the Philippines has remained a laggard among its ASEAN neighbors in terms of investments while its economic growth has largely been consumption-driven, rather than investment-led. The low level of investments is also cited for the country's employment problems.

The proposed CREATE MORE Act is part of the continuing effort to enhance the investment climate of the country and to incentivize the inflow of investments.

On March 26, 2021, Republic Act (R.A.) No. 11534, otherwise known as the Corporate Recovery and Tax Incentives for Enterprises (CREATE) Act, was enacted and took effect on April 11, 2021. With the aim of spurring the inflow and growth of domestic and foreign investments, the CREATE Act lowered corporate income tax (CIT) rates and simplified the fiscal incentives system. The passage of the CREATE Act was seen as timely and beneficial, especially for enterprises still recovering from the Coronavirus disease 2019 (COVID-19) pandemic.

Three years since its enactment, however, issues and concerns surrounding the implementation of the law have emerged. These problems largely stem from ambiguities and inconsistencies between the law, its Implementing Rules and Regulations (IRR), and other administrative issuances on taxes and incentives. Registered business enterprises (RBEs) lamented that these issues have significantly impacted their operations and undermined their competitiveness.

The law's IRR became effective on June 26, 2021 and was amended in December 2, 2022, and further amended in August 15, 2023 to address such inconsistencies. Nonetheless, there was growing clamor from stakeholders to codify these changes resulting in the introduction of the CREATE MORE (Maximize Opportunities for Reinvigorating the Economy) Bill. On March 18, 2024, the House of Representatives approved on Third Reading the CREATE MORE Bill under House Bill No. (HBN) 9794 (Committee Report No. 935) which intends to amend and enhance the tax regime and fiscal incentive framework introduced by the CREATE Act. Similarly, Senate Bill No. 2762 under Committee Report No. 263 principally authored by Senators Sherwin Gatchalian and Juan Miguel Zubiri, which is going through plenary debates and amendments, seeks to clarify the rules and policies on the grant and administration of incentives to qualified enterprises and address other ambiguities affecting the country's investment climate.

This Policy Brief aims to give an overview of the CREATE MORE Bill, as well as provide comments and recommendations on the proposed measure. It also offers background information on

The SEPO Policy Brief, a publication of the Senate Economic Planning Office, provides analysis and discussion on important socio-economic issues as inputs to the work of Senators and Senate Officials. The SEPO Policy Brief is also available at *http://www.senate.gov.ph*.

relevant indicators such as foreign direct investments (FDI), CIT collections and investment tax expenditures.

Background and Overview

Prior to the passage of the CREATE Act, the country's fiscal incentive system suffered from complexities with numerous governing laws and various bodies authorized to grant fiscal incentives. Studies showed that the system appears to have had limited impact in terms of attracting investments. While some incentives are crucial especially for efficiency-seeking businesses, some were unnecessary or redundant as they were availed of by either market- or resource-seeking firms that would still have invested even without the incentives. Moreover, some tax perks were not time-bound, encouraging dependency and perpetually straining public finances. Some firms also purportedly engage in transfer pricing or transform into new entities in order to qualify for another set of tax breaks. The CREATE Act sought to address these issues by reducing CIT rates and rationalizing the fiscal incentive system (i.e., the grant of incentives became more targeted, transparent, time-bound, and performance-based).

Specifically, the CREATE Act lowered the CIT rate from 30.0 percent to 25.0 percent, effective July 1, 2020. A lower tax rate of 20 percent was applied on corporations with net taxable income not exceeding PhP5.0 million and with total assets not exceeding PhP100 million (excluding land on which the business entity's office, plant, and equipment are situated on).

Under the law, eligible registered projects or activities may be granted a four- to seven-year **Income Tax Holiday (ITH)**[1], depending on location and industry priorities. After the ITH period, companies may be granted either one of these two incentives:

- **Special Corporate Income Tax (SCIT)** rate of 5 percent for a period of 10 years for export and domestic companies with a minimum investment capital of PhP500 million and certain domestic market companies engaged in activities deemed "critical", in lieu of all national and local taxes; **or**
- **Enhanced Deductions Regime (EDR)**[2] incentive for a period of 10 years. Note that the CIT rate is applicable only to RBEs availing of the EDR.

Other incentives such as duty exemption on importation of capital equipment, raw materials, spare parts, or accessories, as well as value-added tax (VAT) exemption on importation and VAT zero-rating on local purchases, may also be availed as provided under Section 294 of the law.

Furthermore, the law created a centralized Fiscal Incentives Review Board (FIRB) to approve the grant of the different incentives to the various enterprises.

The CREATE MORE Bill

Proponents of the CREATE MORE Bill point out that there are conflicts between the underlying intent of the CREATE Act with its IRR provisions. Such situation raises questions regarding which set of guidelines should take precedence. Apart from these inconsistencies, issues were likewise raised

[1] ITH is a form of fiscal incentive granting a 100 percent exemption from CIT.
[2] EDR refers to the fiscal incentive that was introduced in the CREATE Act containing the additional deductions on a range of expenses that can be claimed by RBEs from their taxable income.

regarding the tedious tax refund process and the applicability of provisions on the 5 percent gross income earned (GIE) to transitory RBEs.

The following are the salient features of the CREATE MORE Bill and the rationale behind the provisions:

1. Lower standard CIT rate and higher deductible items for enterprises employing the EDR. While the CREATE Act lowered the CIT, the Philippines still has the highest CIT rate among the six major economies in the Association of Southeast Asian Nations (ASEAN) region (Table 1). This makes the Philippines less attractive to foreign investment vis-à-vis its neighbors. Indonesia cut its CIT rate to 22 percent in 2021, while India, the country's biggest competitor in the information technology and business process management (IT-BPM) industry, reduced its CIT rate from 30 percent to 22 percent in 2019.

Table 1. Corporate Income Tax Rate of ASEAN-6

Country	2020	2023
Indonesia	25.0	22.0
Malaysia	24.0	24.0
Philippines	**30.0**	**25.0**
Singapore	17.0	17.0
Thailand	20.0	20.0
Vietnam	20.0	20.0

Source: PWC for 2023, KPMG for 2020

To make the fiscal incentive system more competitive, the CREATE MORE Bill proposes to lower the CIT rate for enterprises choosing the EDR option from 25 percent to 20 percent. As an additional incentive, the proposed measure increases the percentages of deductible items under the EDR option. For instance, deduction of power expenses has been raised from 50 percent to 100 percent. The proposed additional deductibles for RBEs opting for the EDR, are summarized in Table 2.

Table 2. Additional Deductions under the Enhanced Deductions Regime

Particulars	House Committee Report No. 935	Senate Committee Report No. 263
100 percent additional deduction for power cost which may be accumulated during the ITH period*	✓	✓
100 percent additional deduction for expenses for trade fairs, missions, or exhibitions	✓	✓
Inclusion of the tourism industry in the coverage of the reinvestment allowance	✓	
Application of the net operating loss carry over (NOLCO) within five years after the end of the ITH entitlement	✓	

* *Under the House version, 200% additional deduction which may be accumulated during the ITH period*

The CREATE MORE Bill provides that the Department of Finance (DOF) shall determine the terms and conditions under which the enhanced deductions shall apply.

2. Clearer guidelines on the application of VAT on goods and services. Two major issues have emerged regarding the implementation of the CREATE Act incentives, particularly on VAT exemption on importation and VAT zero-rating on local purchases.

First, there is confusion among stakeholders on the eligibility of enterprises for these incentives. Section 295(d) of the CREATE Act specifies that the VAT benefits apply solely to goods and services directly and exclusively used in the *registered project or activity by an RBE*. On the other hand, Section 5 of the IRR states that these VAT benefits extend only to those directly and exclusively used in the

registered project or activity of export enterprises. Stakeholders raised that the limited coverage under the IRR run counter the intention of the law.
Second, there appears to be an inconsistency on the guidance of the Bureau of Internal Revenue (BIR) as to what expenses may qualify under the phrase *"used directly and exclusively."* To clarify the interpretation, the BIR first issued Revenue Memorandum Circular (RMC) No. 24-2022 providing guidance on the documentary support needed for RBE suppliers to obtain prior BIR approval for the VAT zero-rating. In the subsequent year, however, the BIR issued Revenue Regulation (RR) No. 3-2023 which now enumerates services upon which 12 percent VAT may be passed on to an RBE by its service providers. This caused some confusion regarding the application of the cross-border doctrine and VAT refunds since the later issuance appears to differ from what is actually being practiced. Under RR No. 3-2023, enterprises are allowed some flexibility. As long as they can provide supporting evidence to the investment promotion agency (IPA) justifying that the purchase of such services can be categorized as directly and exclusively used for their registered activities, such expenses may still be entitled to 0 percent VAT.

The CREATE MORE Bill seeks to address such concerns by further clarifying and expanding the implementation rules of the VAT exemption on imported products and VAT zero-rating on local purchases. It expressly provides that the VAT incentives will only be applicable to goods and services that are *"directly attributable"* to the registered activities/projects undertaken by RBEs or high-value domestic market enterprises (DMEs) and that these goods and services include: (1) janitorial services; (2) security services; (3) financial services; (4) consultancy services; (5) marketing and promotion; and (6) administrative operations such as human resources, legal, and accounting. The application of such incentives is subject to the following conditions[3]:

a. A zero percent VAT rate on the sale and delivery of goods to registered enterprises within a separate custom territory.
b. The sale, transfer, or disposal of previously VAT-exempt imported capital equipment, raw materials, spare parts, and accessories shall be subject to the following conditions:
    - 0 percent VAT on the transaction if the purchaser is a registered export enterprise, regardless of location;
    - 12 percent VAT on the transaction based on the net book value of the capital equipment, raw materials, spare parts, or accessories if the seller is a registered DME, regardless of location; and
    - 0 percent VAT on the transaction if the seller is a registered DME and the purchaser is a registered export enterprise, regardless of location.

The CREATE MORE Bill likewise expressly exempts *transitory registered RBEs* under the 5 percent GIE regime from all national and local taxes, *including* VAT and duty incentives.

3. Transparent periods of availment and simplified transitory provisions. Under the CREATE Act, Sections 296 and 311 exclusively outlined the duration for availing of income tax incentives and the transitory period for incentives granted prior to the law's effectivity—only the periods for ITH, SCIT or EDR eligibility were explicitly defined. On the other hand, the CREATE Act is silent on any applicability

[3] The House version provides for two more conditions:
1. VAT exemption for the sale of goods or services to a company whose total sales are exported.
2. A 0 percent VAT rate on the sale of goods or services by a VAT-registered seller to registered export enterprises, regardless of location, if export sales are less than 100 percent of total annual production.

period for non-income tax incentives (i.e., VAT incentives) and is presumed to be available throughout the duration of the RBE's registration.

With this in consideration, the CREATE MORE Bill seeks to amend Section 296, modifying the periods of availment of incentives for projects or activities approved by IPAs and inserting therein a new section for those granted by the FIRB.[4] The availment periods of the CREATE MORE Bill are shown in Table 3.

Table 3. Incentives and Periods of Availment

Incentives	House Committee Report No. 935	Senate Committee Report No. 263	
		For projects/activities approved by IPA	For projects/activities approved by FIRB
For export enterprises*			
ITH	4 to 7 years	4 to 7 years	4 to 7 years
Followed by SCIT or EDR	10 years	10 years **OR** for a maximum of 14 to 17 years	20 years **OR** for a maximum of 24 to 27 years
For domestic market enterprises*			
ITH	4 to 7 years	4 to 7 years	4 to 7 years
Followed by EDR	5 years	10 years **OR** for a maximum of 14 to 17 years	20 years **OR** for a maximum of 24 to 27 years
Non-income tax incentives 1) Duty exemption on importation of capital equipment, raw materials, spare parts, or accessories 2) VAT Exemption on importation and VAT zero-rating on local purchases	For the duration of the period of registration; For export enterprises outside the economic and freeport zones: VAT exemption is not provided (House version) For export enterprises: Shall maintain 70 percent (House version), at least 70 percent (Senate version) of total annual production as export sales		

**Income-tax based incentives shall commence from the actual start of commercial operations with the RBE availing of the tax incentives within three years from the date of registration.*

The CREATE MORE Bill also seeks to amend Section 311 to further clarify the period of availment by RBEs that were eligible to enjoy incentives prior to the enactment of the CREATE Act. For instance, RBEs that were granted ITH and were availing of the 5 percent GIE prior to the CREATE Act shall be allowed to avail of the latter, including all corresponding exemptions from national taxes and local taxes, fees, and charges until December 31, 2034. The same deadline is afforded to RBEs that were availing of duty and VAT exemption on importation and VAT zero-rating on local purchases.[5]

---

[4] The Senate version differentiates the periods of availment depending on which institution (i.e., IPA or FIRB) grants the incentive.

[5] Note that one of the inconsistencies in the CREATE Act with its IRR is the period of exemption from customs duties of registered export and domestic market enterprises on their importation of capital equipment, raw materials, spare parts, or accessories for their registered project or activity. Under RMC No. 120-2021 which circularizes the amendments to various sections of the IRR of the CREATE Act, Rule 2, Section 4 of the IRR of the CREATE ACT was amended to include the period of exemption of registered export and DMEs from customs duties on their importation of capital equipment, raw materials, spare parts, or accessories for their registered project or activity. The period provided was for a maximum of 17 years and 12 years from the date of registration, respectively, unless otherwise extended under the SIPP. However, the CREATE Act did not specifically mention this. (Official Communication with BOI Legal and Compliance Service (2024).

4. Rationalization of the VAT refund system. Tedious filing of documentary requirements was identified as a bottleneck for the successful implementation of VAT rebates by RBEs. The tax refund processing and approval reportedly took four to six years. To address this, the BIR issued RMC No. 71-2023, simplifying the documentary requirements and procedures for filing and processing VAT refunds. Major changes include: (a) reduction of documentary requirements; (b) non-submission of scanned copies of sales invoices or official receipts; and (c) reduction in the number of offices to process VAT refund claims.[6]

The CREATE MORE Bill seeks to institutionalize these changes by amending: (1) the period within which the refund of input taxes shall be made; and (2) the manner of giving refunds. Some of the salient provisions include the publication of statistics on the aggregated volume, processing time, and rate of approval of refund claims and other relevant statistics. Moreover, the Senate version transfers the power from the BIR (Commissioner) to the DOF (Secretary) to process VAT refunds, including granting of refunds for creditable inputs taxes and communicating to the taxpayer in writing the deficiencies of the VAT refund claim.

5. Imposition of a Registered Business Enterprise Local Tax (RBELT). The CREATE Act essentially repealed Article 39 of the 1987 Omnibus Investment Code which provided incentives to RBEs. It is unclear, however, whether the law also removed the legal basis for exemption from Local Business Tax (LBT) of RBEs registered under the Board of Investments (BOI) and whether the BOI still has authority to classify and certify enterprises as pioneer or non-pioneer as basis for such exemption under Section 133(g) of the Local Government Code (LGC).[7] In short, confusion arose because the CREATE Act is silent on whether the LBT exemption is still available to RBEs registered prior to or after the passage of the CREATE Act. The Department of Trade and Industry (DTI) sought legal opinion from the Department of Justice (DOJ) and in a February 2024 letter, the DOJ clarified that while the BOI has the authority to classify an RBE as pioneer or non-pioneer, local government units (LGUs) have the power to grant local business tax exemption (Atinon, 2024).

Nonetheless, there were complexities observed in complying with local taxation rules. To address this, the CREATE MORE Bill provides for the imposition of a standard RBELT at a rate of up to 2 percent of *gross income*[8] for enterprises during the ITH or EDR. Eligible enterprises[9] would be paying RBELT, in lieu of all local taxes, fees, and charges imposed by the relevant LGU. The House version provides that for enterprises under SCIT, the RBELT shall be imposed after the duration of the SCIT (i.e., 10 years).

The House version enumerates the following local taxes, fees, and charges:

a. Tax on printing and publication business;
b. Franchise tax;
c. Amusement tax;
d. Annual fixed tax for every delivery truck or van of manufacturers or producers, wholesalers, dealers, or retailers of certain products;

[6] Based on an official communication with the BOI Legal and Compliance Service.
[7] This exemption was also incorporated into R.A. No. 7916 or the "The Special Economic Zone Act of 1995" particularly under Section 23 which provides that *"business establishments operating within the economic zones shall be entitled to the fiscal incentives as provided for under Presidential Decree No. 66, the law creating the Export Processing Zone Authority, or those provided under Book VI of Executive Order No. 226"*.
[8] Gross *sales* in the House version.
[9] Eligibility requires that an enterprise continue to meet the terms of its registration.

e. Local business tax;
f. Fees for sealing and licensing of weights and measures;
g. Regulatory, building, inspection, or permit fees and charges imposed by LGUs;
h. Taxes levied by provinces, cities, or municipalities on business;
i. Barangay taxes, fees, charges, fines, and other financial impositions; and
j. Real property taxes, *except* on property owned by developers.

6. Amendments to the functions of the FIRB. Under the CREATE MORE Bill, the FIRB shall have the following functions, to wit:

a. prescribe/determine data requirements for the application of incentives that will allow for the calculation of cost and benefits upon application; and
b. formulate/recommend additional time-bound or place-specific projects or activities for inclusion in the strategic investment priority plan (SIPP).

The House version reverts the power of the FIRB to approve/disapprove the grant of tax incentives back to the IPAs and replaces it with the power to recommend the grant of tax and non-tax incentives to RBEs engaged in a highly desirable or specific industrial activity.

On the other hand, the Senate version provides that on top of its policymaking and oversight functions, the FIRB shall have regulatory and quasi-judicial functions on the administration and granting of fiscal incentives. Additionally, the Senate version increases the threshold amount of the investment capital of potential enterprises upon which the FIRB shall grant incentives. That is, the granting of incentives shall fall on the FIRB if the investment capital is above the threshold amount of PhP20 billion,[10] while IPAs shall grant incentives to those with investment capital of PhP20 billion and below (provided that the activities/projects are listed under the national or local SIPP).

7. Creation of an RBE Taxpayer Service. The CREATE MORE Bill provides for the creation of a separate unit/service within the BIR that would specifically cater to RBEs. This provision seeks to streamline and fast-track the filing of returns and payment of taxes of RBES to be done by a specific unit dedicated for such. HBN 9794 and SBN 2762 designate regional Negosyo Centers as One-Stop Action Centers or as initial points of contact for foreign investment leads.

8. Institutionalization of alternative work arrangements. Under the CREATE Act, RBEs within the economic and freeport zones are compelled to perform their activities only within the geographical boundaries of the zone or freeport. The House version allows RBEs engaged in the IT-BPM sector, that are compliant with on-site work requirements to conduct business under alternative work arrangements. Meanwhile, the Senate version allows RBEs to institute a telecommuting program as defined under RA No. 11165, otherwise known as the "Telecommuting Act", including work-from-home arrangements.

9. Grant of special visas to foreign nationals. The CREATE MORE Bill of the House of Representative allows IPAs to issue special visas. This is expected to ease doing business in the country by fast-tracking the visa application of skilled workers that RBEs may require. These include the *special skills visas* for foreign nationals who possess highly specialized skills, and *executive working visa* for foreign

[10] PhP1.0 billion under the CREATE Act but was recently increased to PhP15.0 billion through FIRB Resolution No. 003-24.

nationals holding executive positions, including Presidents, Vice Presidents, Treasurers, Managers, or their equivalents, and to non-resident aliens employed in supervisory, technical, and advisory positions, as determined to be necessary or strategic by the concerned IPA in the operation of their RBEs. This also echoes that which is provided in the Special Economic Zone Act, which empowers the Philippine Economic Zone Authority (PEZA) to issue working visas. The relevant IPAs shall formulate, together with the Bureau of Immigration (BI), the relevant application guidelines while the RBEs requiring the expertise of the applicants shall sponsor the special visas. Note though that this provision has been taken out of the CREATE MORE Bill of the Senate.

Comments on the Proposed CREATE MORE Act

First, lowering the CIT rates would put the Philippines at par with its neighbors in the ASEAN region and therefore, make it competitive vis-à-vis its neighbors. Due consideration, however, may be given to the enhanced/additional allowable deductions that are being proposed under the CREATE MORE Bill. While the Philippines has one of the most expensive power costs in the region, allowing for a 100 percent deduction for power cost may go against the polluter-pay principle as much of the energy that is being generated in the country are from fossil fuel. Allowing for such might not only incentivize investments, but also imprudent (energy) consumption behavior. The inclusion of a mechanism for incentivizing the use of renewable energy sources by RBEs may be considered.

Moreover, the 100 percent allowable deduction for power costs as well as expenses for trade fairs and missions might also be viewed as a form of subsidy, payment for which would have to be shouldered by taxpayers. Indeed, while some incentives may be crucial, some may be unnecessary or redundant as they are availed of by either market- or resource-seeking firms that would still have invested even without the incentives. Note that the DOF version of the CREATE MORE Bill is estimated to result in a revenue loss of PhP4.4 billion.[11]

Second, the proposed provisions that seek to clarify the guidelines regarding VAT incentives, as well as the those that seek to streamline the VAT refund process is a welcome update. Such proposed amendments may be considered revenue enhancing as they provide for clearer expression of policy (i.e., incentivize investments) and guidelines, thereby safeguarding the incentives framework from abuse. Nonetheless, it might be fair to say that the challenges do not lie in the legislation itself, rather, on the interpretation and enforcement of the IRR. In addition, reports indicate that it currently takes four to six years for an RBE to process a VAT refund with the BIR. This is deemed too long for investors who are very much attuned to the (opportunity) cost of money, making the Philippines less attractive to existing and potential investors.[12]

The provisions regarding the imposition of the RBELT are deemed favorable as well, as they provide clarity regarding the rules for the continuous enjoyment of LBT exemptions during the transitory periods under the CREATE Act. Such provisions reflect the points raised in the clarificatory issuance of the DOF regarding LBT exemptions of transitioning RBEs.[13] The House version of the CREATE MORE Bill additionally provides guidance on the applicability of the LBT exemption for RBEs that are under SCIT.

---

[11] The DOF version provides similar deductions as in the House version, except lower (50%) deductions for power costs and lower (50%) expenses for trade fairs and missions.
[12] https://asia.nikkei.com/Politics/Philippines-risks-losing-foreign-investment-over-delayed-tax-rebates.
[13] Department Order (DO) No. 033-202, disseminated by the FIRB on August 31, 2023 through FIRB Advisory No. 014-2023.

Third, extending the periods of availment may be a double-edged sword. On one hand, longer periods of availment provide enterprises enough time to recover returns to their investments. On the other, longer periods of availment translate to larger revenue loss for the government, which may affect service delivery to the larger populace. One may recall that during the deliberation of the CREATE Act, one objective was to limit incentive periods (i.e., make incentives time-bound), considering that some enterprises—especially those already established and/or enjoy pioneer status—rely not only on incentives but also on other factors (i.e., strong macroeconomic fundamentals, good governance, and reliable infrastructure) to gauge the attractiveness and sustainability of an investment destination.

Fourth, careful consideration must be given to the functions of the FIRB. One of the reservations raised during the deliberations of the CREATE Act is that it vested on the FIRB oversight function as well as the power to approve/disapprove the grant of fiscal incentives. Such arrangement may give rise to conflict-of-interest issues, similar to situations where one body is both the regulator and the operator of a facility. The House version of the proposed CREATE MORE Act addresses this concern by reverting back to the IPAs the power to approve/disapprove the grant of fiscal incentives and replace it with the power *to recommend* the grant of incentives to highly desirable projects. Indeed, much of the amendments to the stipulated functions of the FIRB were worded such that the FIRB was given a more passive role in the granting/withdrawing of incentives. For instance, the FIRB's power to cancel, suspend, or withdraw the availment fiscal incentives was reworded to read: "To *monitor* the cancellation, suspension, or withdrawal of incentives by the IPAs." The CREATE MORE Bill seeks to clearly delineate the functions of the FIRB from those of the IPAs and such proposed amendments may be deemed to promote accountability of both the FIRB and IPAs.

As to the proposed additional function of the FIRB to recommend to the President standard for proclaiming economic zones, such function duly resides in a policymaking body. Continued effort must be exerted by the FIRB to harmonize such standards that are based on sound economic principles, with due consideration of the potential costs and benefits accruing to the greatest number of people, and not just a few politically savvy investors.

Fifth, there might be some merit in adopting special visas as a form of non-fiscal incentive to boost the attractiveness of the country to investors. A pre-arranged employment visa is a requirement for foreign individuals entering the Philippines to participate in any legal employment, whether for wages, salary, or other forms of remuneration (BI, n.d.). The issuance by an IPA of the special skills visa is a form of an incentive for RBEs employing foreign nationals and would make the processing of their work requirements easier. Other countries especially those with skill shortages have similar systems in place (Baloch, S.,2024).[14] In Japan, the J-Skip Visa involves an accelerated visa processing for highly skilled professionals. In Germany, an opportunity card is provided which involves a system based on points that facilitates immigration for individuals possessing in demand skills and qualifications. A similar program is offered in Australia, which offers a skilled Independent Visa, a points-based system designed for skilled professionals pursuing permanent residency in the country.

The Special Economic Zone Act (i.e., PEZA Charter), in fact, allows the PEZA to issue working visas, renewable every two years. However, there is some concern as to whether such provision (i.e., granting of special visa), which is a form of a non-fiscal incentive, could be codified into the Tax Code or in a

[14] https://www.linkedin.com/pulse/11-countries-skill-shortages-work-visa-options-2024-naeem-baloch-zg5mf.

separate piece of legislation entirely. Note though that this provision has been taken out of the Senate version of the CREATE MORE Bill.

Sixth, it is critical to recognize the importance of a cost-benefit analysis (CBA) or quantify the medium- to long-term economic impact of the proposed measure. It would be ideal to conduct a CBA on the proposed measure to determine its potential positive and negative impact (e.g., revenue impact, estimated investments, projected employment). Such study would be useful in making informed decisions by policymakers in crafting the measure and in evaluating its actual impact. Clarification might be sought as to whether the DOF has conducted a CBA on its proposed version of the CREATE MORE Bill.

Lastly, there is a need to anticipate any future tax developments. In November 2023, the Philippines joined the Organization for Economic Co-operation and Development (OECD)/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS). The framework's objective is to reduce harmful tax avoidance and evasion by multinational enterprises (MNEs), which creates large losses in governments' revenues. As of end 2023, 10 out of 14 members in the ASEAN+3 have joined and embraced the framework's two-pillar approach, alternatively known as BEPS 2.0.[15]

Pillar 1 covers the largest and most profitable MNEs that have at least EUR20 billion in revenue while Pillar 2 might be more relevant to the Philippines as it has a lower threshold of EUR750 million. Pillar 2 has four rules including the Global Anti-Base Erosion (GloBE) Model Rules. These rules establish a harmonized taxation framework ensuring that MNEs pay a minimum tax on their earnings in each jurisdiction they operate. If their effective tax rate in a jurisdiction falls below this minimum, they will face an additional tax on their profits. The GloBE Rules sets a global minimum tax rate of 15.0 percent for MNEs with turnovers exceeding EUR750 million. Economies from the ASEAN+3 have started taking steps toward implementing Pillar 1 and Pillar 2 by assessing the impact of BEPS 2.0 on their economies and making amendments to their domestic laws and tax treaties.

The implications of the Philippine's subscription to the BEPS Framework should be analyzed. Perhaps the CREATE MORE Bill could align the relevant provisions. For instance, a recommendation provided during one of the Senate public hearings is to revisit the proposed enhanced deductions to prevent any additional top-up taxes to meet the minimum tax rate of 15.0 percent under Pillar 2 of the BEPS.

Background research offers some noteworthy implications. For instance, Baldrias and Navarro (2023) explain that the impact of these new rules is the restrictions in tax incentives for companies in specific jurisdictions. The Philippine government might look into implementing income inclusion rules (IIRs) to ensure that taxes are collected from jurisdictions where subsidiaries might be paying less than the global minimum tax.

Conclusion and Recommendations

The concerted effort of government to enhance the investment environment and attract foreign investors, alongside improvements in governmental institutions, are widely acknowledged.

Foremost, the proponents must take heed of the resulting revenue foregone of the policy. Fiscal responsibility dictates that resources should be managed efficiently. Nonetheless, the collective

[15] https://amro-asia.org/global-tax-reform-what-lies-ahead-for-asean3

impacts need to be analyzed including other aspects such as employment and investments. Hence, it is recommended that a CBA be undertaken as part of the proposal's due diligence. It is also recommended to discuss the quantitative and qualitative medium- to long-term economic impacts (at least on revenues, investments, and employment).

The proposal may also consider the implications of the formal implementation in the Philippines of the Pillar 2 of the OECD/G20 Inclusive Framework on BEPS which would require a global minimum corporate tax through domestic legislation.

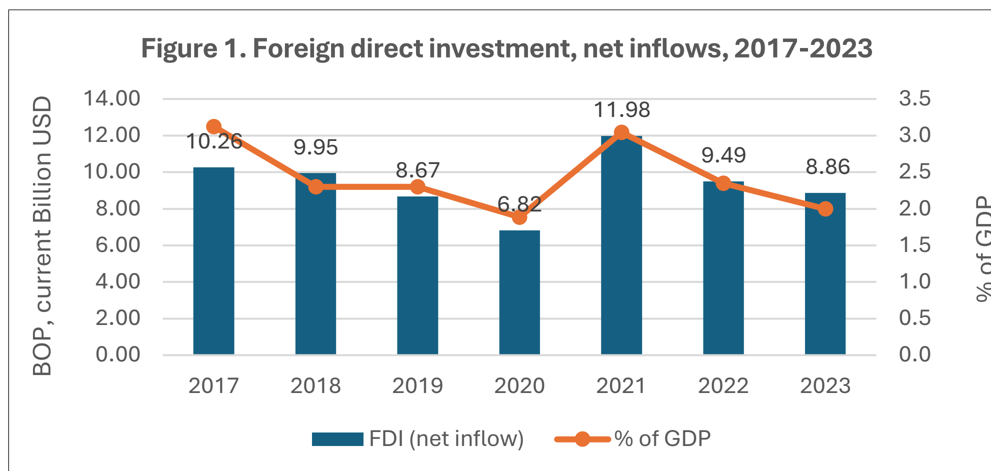
The agency concerned can also offer further explanations regarding the unmet annual expectations/projections on the investment tax expenditures. Additionally, clarifications on the actual impacts of the CREATE Act on investments need to be raised and answered. It was seen that the increase/decrease in FDIs was attributed to several factors including relaxation of foreign restrictions, external risks, and introduction of a policy.

While some policy change may be necessary to update or align domestic policies with international agreements that the Philippines has entered into, *frequent* policy changes results in loss of credibility for it would seem that the policy was not well thought of in the first place. The latter also comes at a cost in terms of revenue foregone for the government and high opportunity costs for industries. The objective of the policy should be clearly expressed from the get-go to avoid inconsistent interpretations/administrative issuances. In the case of the CREATE Act, if the foremost objective is to attract more investments, then, administrative requirements (under the IRR or of the BIR) should not unduly impair the taxpayers' rights to avail of incentives which are clearly provided under the said law.

Lastly, it should be ensured that the CREATE MORE Bill is being proposed for the interests of the Filipino people and not for the interests of the few. It should be known that passing the CREATE MORE Bill or any policy in general is an accountability that the government needs to accept.

Annex: Review of Relevant Indicators

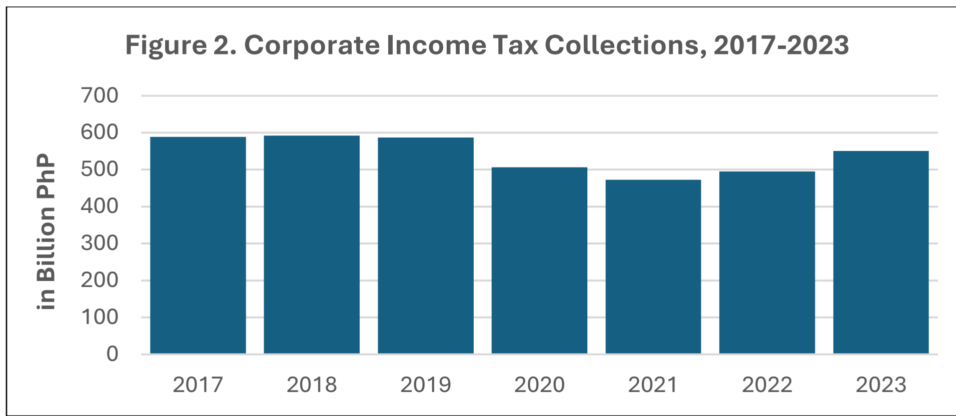
Foreign Direct Investments. FDIs have been decreasing since 2017, with a brief uptick in 2021, followed by another decline in 2022 until 2023 (Figure 1). The pandemic dampened business sentiments, negatively affecting investor confidence. According to a report by the Bangko Sentral ng Pilipinas (BSP), "the disruptive impact of the pandemic on global supply chains and the weak business outlook adversely affected investor decisions in 2020" (BSP, 2021).



Source of basic data: World Development Indicators (WDI), World Bank (WB) for 2017-2022, Bangko Sentral ng Pilipinas (BSP) and Philippine Statistics Authority (PSA) for 2023

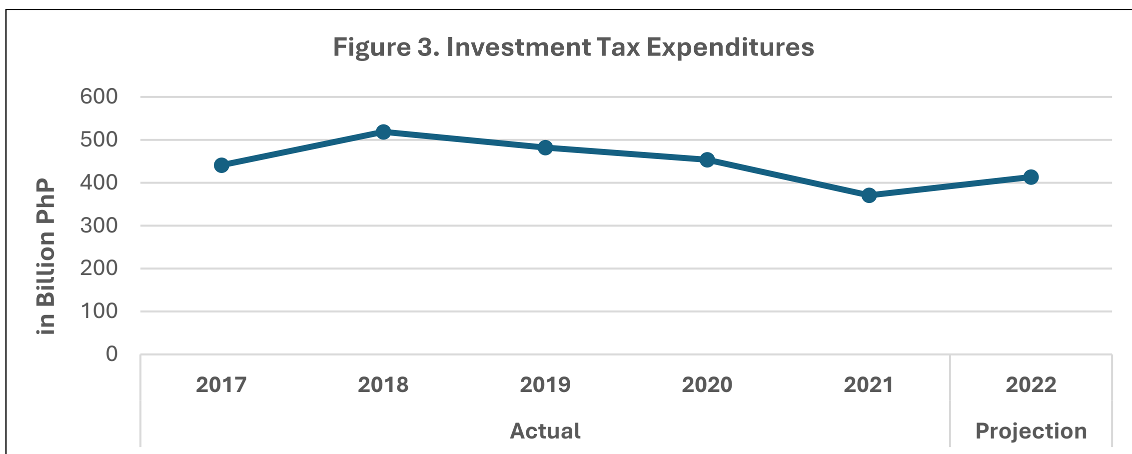
Some analysts attribute the increase in FDI in 2021 to the implementation of the Create Act and the reopening of the economy, although there may also be a base effect from the low levels in 2020. In 2022, FDI fell due to the global slowdown and high inflation, impacting investor decisions (BSP, 2023). Despite the strong macroeconomic fundamentals, concerns over global growth and geopolitical risks continued, further reducing FDI in 2023 (BSP, 2024).

Corporate Income Tax Collections. CIT collections expectedly declined in 2020 arising from the restrictions posed by the community quarantines during the COVID-19 pandemic which affected business decisions and conditions. As expected, it further declined in 2021 following the reduction in the CIT rate mandated by the CREATE Act. It registered increases in 2022 and 2023 that could be due to an increase in the number of businesses opening/reopening, which could also be a sign of economic recovery (Figure 2).



Source: Bureau of Internal Revenue

Investment Tax Expenditures. Figure 3 below reveals that investment tax expenditures (ITE) exhibit a declining trend from 2018-2021. A closer look at the data will show that the annual program has no consistent trend. From 2019 to 2020, it was programmed to decrease while in 2021, it was programmed to increase. It was projected to further increase in 2022. The decline in actual investment tax expenditures in 2021 was due to the implementation of the CREATE Act which was estimated to have resulted in a revenue loss of PhP138.2 Billion (Budget of Expenditures and Sources of Financing, 2022).



Source: Budget of Expenditures and Sources of Financing (BESF) 2021, 2022, 2023 and 2024.
Note: Total includes incentives of cooperatives.

References

Abrea, R. (2024). OECD's Global Minimum Tax. The good and the bad. https://map.org.ph/oecds-global minimum-tax-the-good-and-the-bad.

Atinon, K. (30 April 2024). Local business tax exemption for registered enterprises: Who has the final say? KPMG. https://kpmg.com/ph/en/home/insights/2024/03/local-business-tax-exemption-for-registered-enterprises-who-has-the-final-say.html.

Baladad, B. (9 November 2021). A New Global Tax Regime. https://bdblaw.com.ph/index.php/newsroom/articles/other-articles/806-a-new-global-tax-regime-2.

Baldrias, L. and Navarro, C. (18 September 2023). Pillar 2 and its impact on Philippine incentives. https://www2.deloitte.com/ph/en/pages/tax/articles/pillar-2-impact-on-philippines.html.

Baloch, S. (29 February 2024). 11 Countries with Skill Shortages & Work Visa Options in 2024. https://www.linkedin.com/pulse/11-countries-skill-shortages-work-visa-options-2024-naeem-baloch-zg5mf.

Bangko Sentral ng Pilipinas. (10 March 2021). FDI Registers US$509 Million Net Inflows in December 2020; Full-Year Level Reaches US$6.5 Billion. https://www.bsp.gov.ph/SitePages/MediaAndResearch/MediaDisp.aspx?ItemId=5704.

Bangko Sentral ng Pilipinas. (10 March 2023). FDI Posts US$634 Million Net Inflows in December 2022; Full-Year 2022 FDI Reaches US$9.2 Billion. https://www.bsp.gov.ph/SitePages/MediaAndResearch/MediaDisp.aspx?ItemId=6645.

Bangko Sentral ng Pilipinas. (11 March 2024). FDI Net Inflows Rise to US$826 Million in December 2023; Full-Year 2023 Level Reaches US$8.9 Billion. https://www.bsp.gov.ph/SitePages/MediaAndResearch/MediaDisp.aspx?ItemId=7026.

Bangko Sentral ng Pilipinas. Foreign Direct Investments Balance of Payments and International Investment Position, 6th Edition (BPM 6 Concept) 2022-2023. https://www.bsp.gov.ph/Media_And_Research/Media%20Releases/2024_03/news-03112024a2.xls.

Basilio, K. (18 March 2024). *House passes CREATE MORE legislation on final reading*. https://www.bworldonline.com/economy/2024/03/18/582692/house-passes-create-more-legislation-on-final-reading/.

Board of Investments. (8, January 2024). BOI investment approvals soar to all-time high, recording Php1.26-T in 2023. https://boi.gov.ph/boi-investment-approvals-soar-to-all-time-high-recording-php1-26-t-in-2023/.

Board of Investments Legal and Compliance Service (2024). Discrepancies between the Provisions of the CREATE Law and Its Implementing Rules and Regulations.

Bureau of Immigration. (n.d.) https://immigration.gov.ph/pre-4-arranged-employment-visa-9g/.

Bureau of Internal Revenue (BIR) Memorandum Circular (MC) Number 74-99. https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/11/38132.

Bureau of Internal Revenue (BIR) Memorandum Circular (MC) Number 24-2022. https://firb.gov.ph/download/rmc-no-24-2022/#.

Committee Report Number 935 Re: House Bill Number 9794. An Act Enhancing Philippine Tax Incentives Policy and Administration, Amending for the Purpose Sections 112, 294, 295, 301, 309, and 311 of the National Internal Revenue Code, as Amended, and For Other Purposes. 19th Congress. https://www.congress.gov.ph/legislative-documents/.

Committee Report Number 263 Re: Senate Bill Number 2762. An Act Enhancing Philippine Tax Incentives Policy and Administration, Amending for the Purpose Sections 112, 293, 294, 295, 296, 297, 300, 301, 309, 310, and 311 of the National Internal Revenue Code of 1997, as Amended, and for other Purposes. http://legacy.senate.gov.ph/lisdata/4444340393!.pdf.

Daniel Kaufmann and Aart Kraay (2023). Worldwide Governance Indicators, 2023 Update (www.govindicators.org), Accessed on 10/19/2023.

Department of Budget and Management. Budget of Expenditures and Sources of Financing 2022 Table C.5. List of Revenue Measures. https://www.dbm.gov.ph/wp-content/uploads/BESF/BESF2022/C5.pdf.

Department of Budget and Management. Budget of Expenditures and Sources of Financing (BESF) 2021. Table J.1.a. 2018 Investment Tax Expenditures, by Type of Tax Incentives, FY 2017-2019. https://www.dbm.gov.ph/wp-content/uploads/BESF/BESF2021/J1a.pdf.

Department of Budget and Management. Budget of Expenditures and Sources of Financing (BESF) 2022. Table J.1.a. 2019 Investment Tax Expenditures, by Type of Tax Incentives, FY 2018-2020. https://www.dbm.gov.ph/wp-content/uploads/BESF/BESF2022/J1a.pdf.

Department of Budget and Management. Budget of Expenditures and Sources of Financing (BESF) 2023. Table J.1.a. 2020 Investment Tax Expenditures, by Type of Tax Incentives, FY 2019-2021. https://www.dbm.gov.ph/wp-content/uploads/BESF/BESF2023/J1a.pdf.

Department of Budget and Management. Budget of Expenditures and Sources of Financing (BESF) 2024. Table J.1.a. 2021 Investment Tax Expenditures, by Type of Tax Incentives, FY 2020-2022. https://www.dbm.gov.ph/wp-content/uploads/BESF/BESF2024/J1a.pdf.

Department of Budget and Management. Budget of Expenditures and Sources of Financing (BESF) 2021. Table J. 2. Number of Registered Business Entities, by Investment Promotion Agencies, including Cooperatives, FY 2017-2018. https://www.dbm.gov.ph/wp-content/uploads/BESF/BESF2021/J2.pdf.

Department of Budget and Management. Budget of Expenditures and Sources of Financing (BESF) 2022. Table J. 2. Number of Registered Business Entities, by Investment Promotion Agencies, including Cooperatives, FY 2018-2019. https://www.dbm.gov.ph/wp-content/uploads/BESF/BESF2022/J2.pdf.

Department of Budget and Management. Budget of Expenditures and Sources of Financing (BESF) 2023. Table J. 2. Number of Registered Business Entities, by Investment Promotion Agencies, including Cooperatives, FY 2019-2020. https://www.dbm.gov.ph/wp-content/uploads/BESF/BESF2023/J2.pdf.

Department of Budget and Management. Budget of Expenditures and Sources of Financing (BESF) 2024. Table J. 2. Number of Registered Business Entities, by Investment Promotion Agencies, including Cooperatives, FY 2020-2021. https://www.dbm.gov.ph/wp-content/uploads/BESF/BESF2024/J2.pdf.

Department of Finance. (2024, May 9). *Proposed Amendments to the Tax Code, as amended by the Corporate Recovery and Tax Incentives for Enterprises Act*. [Public Hearing]. Committee on Ways and Means Hearing. Senate of the Philippines.

Fiscal Incentives Review Board. Preliminary Cost Benefit Analysis, as of September 30, 2023. https://firb.gov.ph/download/preliminary-cost-benefit-analysis-as-of-september-30-2023/?wpdmdl=3699&refresh=66d00f1112c441724911377.

Executive Order Number 65, October 29, 2018. Eleventh Regular Foreign Investment Negative List. https://lawphil.net/executive/execord/eo2018/eo_65_2018.html.

Garcia, Z. (14 December 2018). The Philippines' Investment Outlook for 2019. https://www.aseanbriefing.com/news/philippines-investment-outlook-2019/.

KPMG. Corporate tax rates table. https://kpmg.com/ph/en/home/services/tax/tax-tools-and-resources/tax-rates-online/corporate-tax-rates-table.html.

Matic, C. (21, March 2022). New VAT zero-rating rules and requirements under CREATE. https://www.sgv.ph/c-suite/New-VAT-zero-rating-rules-and-requirements-under-CREATE.

Philippine Statistics Authority. Approved Foreign Investments by Investment Promotion Agency, 2011 to 2023. https://www.psa.gov.ph/statistics/foreign-investments/time-series-data.

PWC. Corporate Income Tax Rates. https://taxsummaries.pwc.com/quick-charts/corporate-income-tax-cit-rates.

Republic Act Number 11534. Corporate Recovery and Tax Incentives for Enterprises (CREATE) Act. https://lawphil.net/statutes/repacts/ra2021/ra_11534_2021.html.

Republic Act Number 7916. Special Economic Zone Act of 1995. https://www.peza.gov.ph/special-economic-zone-act.

Senate of the Philippines (2024). Public Hearing of the Senate Committee on Ways and Means on various measures enhancing Philippine tax incentives: SB 2654, HB 9794, Senate Resolution No. 567, Senate Resolution No. 244, and Senate Resolution No. 219. 19th Congress.

Visda, M. (2023). Philippines cedes tax revenue under global minimum tax rules. https://www.pwc.com/ph/en/tax/tax-publications/taxwise-or-otherwise/2023/philippines-cedes-tax-revenue-under-global-minimum-tax-rules.html.

World Bank Group. Foreign direct investment, net inflows (BoP, current US$). 2017-2022. https://data.worldbank.org/indicator/BX.KLT.DINV.CD.WD.

This Policy Brief was prepared by Ms. Arlene F. Sison, with inputs from the Macroeconomics Sector Head, under the supervision of SEPO Directors and the overall guidance of the Director General. The views and opinions expressed herein are those of the SEPO and do not necessarily reflect those of the Senate, of its leadership, or of its individual members. For comments and suggestions, please e-mail us at sepo@senate.gov.ph.