

ADVISORY ON TAX INCENTIVES UNDER CREATE

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AMENDMENTS TO THE IMPLEMENTING RULES AND REGULATIONS OF CREATE ACT	1-6

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DEPARTMENT OF FINANCE

DEPARTMENT OF TRADE AND INDUSTRY

Implementing Rules and Regulations

Amendment to the Implementing Rules and Regulations (IRR) of the Corporate Recovery and Tax Incentives for Enterprises (CREATE) Act

On customs duty exemption

- Exemptions on importation of capital equipment, raw materials, spare parts, or accessories may only be enjoyed by **registered export and domestic market enterprises**
- Unless otherwise extended under the Strategic Investment Priority Plan (SIPP), the maximum period to enjoy the exemption, counted from the date of registration, are as follows:
 - **17 years** for registered export enterprises
 - **12 years** for registered domestic market enterprises

On VAT zero-rating and exemption

- Unless otherwise extended under the SIPP, the maximum period to enjoy the exemption is **17 years** counted from the date of registration
- “Direct and exclusive use” includes expenditures **directly attributable to** the registered project or activity
- Enjoyment of VAT zero-rating on local purchases requires:
 - Endorsement of the concerned IPA and
 - Documentary requirements of the BIR

On qualified expansion, entirely new project, or existing registered project or activities

- Qualified expansion projects or activities may be granted:
 - 3 years ITH followed by Enhanced Deductions or SCIT, as applicable and/or
 - Duty exemption, VAT exemption on importation and VAT zero rating on local purchases

On non-income related tax incentives

- Registered export and domestic market enterprises may enjoy non-income related tax incentives provided:
 - Duty exemption, VAT exemption on importation, and VAT zero-rating on local purchases shall only apply to goods and/or services directly attributable to and exclusively used in the registered project activity located inside the ecozones or freeports until the expiration of the transitory period

- Importation of capital equipment, raw materials, spare parts, or accessories by existing registered export and domestic market enterprises registered with the BOI prior to the effectivity of the Act shall continue to enjoy duty exemption for 5 years from the date of registration

On Offshore Gaming Licensees and Accredited Service Providers

- Offshore Gaming Licensees and Accredited Service Providers shall continue to enjoy incentives granted to it by IPAs until:
 - Expiration of transitory period under Section 311 of the Tax Code, as amended or
 - Expiration of the license or accreditation, whichever comes earlier

Comparative View of the Original and Amended IRRs

Original IRR	Amended IRR
Rule 2, Section 4 - Customs Duty Exemption on Importation of Capital Equipment, Raw Materials, Spare Parts, or Accessories	
The importation of capital equipment, raw materials, spare parts, or accessories made by RBEs shall be exempt from customs duties, <i>provided</i> , that the following conditions are complied with: xxx	<u>REGISTERED EXPORT AND DOMESTIC MARKET ENTERPRISES SHALL ENJOY EXEMPTION FROM CUSTOMS DUTIES ON THEIR importation of capital equipment, raw materials, spare parts, or accessories FOR THEIR REGISTERED PROJECT OR ACTIVITY FOR A MAXIMUM PERIOD OF SEVENTEEN (17) YEARS AND TWELVE (12) YEARS FROM THE DATE OF REGISTRATION, RESPECTIVELY, UNLESS OTHERWISE EXTENDED UNDER THE SIPP; provided</u> , that the following conditions are complied with: xxx
Rule 2, 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, during the period of registration of the said registered project or activity with the concerned IPA; <i>Provided</i> , That transactions falling under Section	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 a registered export enterprise, <u>FOR A MAXIMUM PERIOD OF SEVENTEEN (17) YEARS FROM THE DATE OF REGISTRATION, UNLESS OTHERWISE EXTENDED UNDER THE SIPP.</u>

Original IRR	Amended IRR
Rule 2, Section 5 - Value-added Tax (VAT) zero-rating and exemption	
<p>106(A)(2)(a)(3), (4), and (5) and Section 108(B)(1) and (5) of the Code, as amended, shall be subject to the twelve percent (12%) VAT pursuant to Revenue Regulations 09-2021. <i>Provided, further,</i> That excess input taxes attributable to zero-rated sales by VAT-registered RBEs, may at the RBEs option, be refunded or applied for a tax credit, subject to the guidelines provided under Revenue Regulations No. 13-2018, as amended.</p> <p>The direct and exclusive use in the registered project or activity refers to raw materials, inventories, supplies, equipment, goods, services and other expenditures necessary for the registered project or activity without which the registered project or activity cannot be carried out.</p>	<p>The direct and exclusive use for the registered project or activity refers to raw materials, inventories, supplies, equipment, goods, <u>PACKAGING MATERIALS, SERVICES, INCLUDING PROVISION OF BASIC INFRASTRUCTURE, UTILITIES, AND MAINTENANCE, REPAIR AND OVERHAUL OF EQUIPMENT</u>, and other expenditures <u>DIRECTLY ATTRIBUTABLE TO</u> the registered project or activity without which the registered project or activity cannot be carried out; <u>PROVIDED, THAT THE VAT ZERO-RATING ON LOCAL PURCHASES SHALL BE GRANTED UPON THE ENDORSEMENT OF THE CONCERNED IPA, IN ADDITION TO THE DOCUMENTARY REQUIREMENTS OF THE BIR.</u></p>
Rule 2, Section 8 - Taxation after the expiration of the period of availment of incentives	
<p>All registered business enterprises shall pay all applicable taxes at the regular rates under the Code and other laws after the expiration of the period of incentives of their registered project or activity.</p>	<p>All registered business enterprises shall pay all applicable taxes at the regular rates under the Code and other laws after the expiration of the period of incentives of their registered project or activity, <u>UNLESS OTHERWISE PROVIDED IN THESE RULES.</u></p>
Rule 3, Section 3 - Qualified expansion, entirely new project, or existing registered project or activities	
<p style="text-align: center;">xxx</p> <p>Qualified expansion projects or activities defined under Rule 1, Section 4(U), may be granted an ITH for three (3) years, <i>Provided,</i> That the application for tax incentives for a qualified expansion project or activity shall be approved by the FIRB or concerned IPA, as the</p>	<p style="text-align: center;">xxx</p> <p>Qualified expansion projects or activities defined under Rule 1, Section 4(U), may be granted <u>THREE (3) YEARS ITH FOLLOWED BY THE ENHANCED DEDUCTIONS OR SCIT, AS APPLICABLE. THE EXPANSION PROJECT OR ACTIVITY MAY ALSO BE ENTITLED TO DUTY EXEMPTION, VAT</u></p>

Original IRR	Amended IRR
Rule 3, Section 3 - Qualified expansion, entirely new project, or existing registered project or activities	
<p>case may be, based on the amount of investment capital of the expansion project or activity.</p>	<p><u>EXEMPTION ON IMPORTATION AND VAT ZERO RATING ON LOCAL PURCHASES UNDER RULE 2, SECTIONS 4 AND 5, RESPECTIVELY; Provided, that the application for tax incentives for a qualified expansion project or activity shall be approved by the FIRB or concerned IPA, as the case may be, based on the amount of investment capital of the expansion project or activity UNDER RULE 5, SECTION 1.</u></p>
Rule 17, Section 2 - Entitlement to duty exemption on importation of capital equipment, raw materials, spare parts or accessories	
<p>Existing RBEs with valid Certificate of Authority to Import (CAI) or Admission Entry whose capital equipment, raw materials, spare parts or accessories were ordered, as reflected in the date of the purchase order or on the date of the opening of the corresponding letters of credit; or loaded, as reflected in the bill of lading date; or are still in transit during the effectivity of Executive Order 85, Series of 2019, shall qualify for the duty exemption until the expiration of the CAI/Admission Entry or the transitory period under Section 311 of the Code.</p>	<p>Existing RBEs with valid Certificate of Authority to Import (CAI) or Admission Entry whose capital equipment, raw materials, spare parts or accessories were ordered, as reflected in the date of the purchase order or on the date of the opening of the corresponding letters of credit; or loaded, as reflected in the bill of lading date; or are still in transit during the effectivity of Executive Order 85, Series of 2019, shall qualify for the duty exemption until the expiration of the CAI/Admission Entry.</p>
Rule 18, Section 5 - Non-income related tax incentives	
<p>All registered business enterprises that will continue to avail of their existing tax incentives subject to Sections 1, 2, and 3 of this Rule, may continue to enjoy the duty exemption until the expiration of the CAI/Admission entry or until the expiration of the transitory period under Section 311 of the Code. <i>Provided, That the VAT exemption on importation and VAT zero-rating on local purchases shall only apply to goods and services directly and exclusively used in</i></p>	<p>All registered <u>EXPORT AND DOMESTIC MARKET</u> enterprises that will continue to avail of their existing tax incentives subject to Sections 1, 2, and 3 of this Rule, may continue to enjoy the duty exemption, <u>VAT EXEMPTION ON IMPORTATION, AND VAT ZERO-RATING ON LOCAL PURCHASES ARE PROVIDED IN THEIR RESPECTIVE IPA REGISTRATIONS; Provided, That the DUTY EXEMPTION, VAT exemption on importation and VAT zero-rating on local purchases shall only</u></p>

Original IRR	Amended IRR
Rule 18, Section 5 - Non-income related tax incentives	
<p>the registered project or activity of the export enterprises during the period of registration of the said registered project or activity with the concerned IPA; <i>Provided further</i>, That transactions falling under Section 106(A)(2)(a)(3), (4), and (5) and Section 108(B)(1) and (5) of the Code, as amended, shall be subject to the twelve percent (12%) VAT pursuant to Revenue Regulations No. 09-2021. <i>Provided finally</i>, That excess input taxes attributable to zero-rated sales by VAT-registered RBEs, may at the RBE's option, be refunded or applied for a tax credit, subject to the guidelines provided under Revenue Regulation No. 13-2018, as amended.</p> <p>After the expiration of the transitory period under Section 311 of the Code and without prejudice to Rule 3 Section 3, all applicable taxes shall apply.</p>	<p>apply to goods and services directly <u>ATTRIBUTABLE TO</u> and exclusively used in the registered project or activity of <u>SAID REGISTERED</u> export enterprises <u>LOCATED INSIDE THE ECOZONES AND FREEPORTS UNTIL THE EXPIRATION OF THE TRANSITORY PERIOD; PROVIDED FURTHER, THAT IMPORTATION OF CAPITAL EQUIPMENT, SPARE PARTS, AND ACCESSORIES BY EXISTING EXPORT ENTERPRISES AND DOMESTIC MARKET ENTERPRISES REGISTERED WITH THE BOI PRIOR TO THE EFFECTIVITY OF THE ACT SHALL CONTINUE TO BE SUBJECT TO DUTY EXEMPTION FOR A PERIOD OF FIVE (5) YEARS FROM DATE OF REGISTRATION.</u></p>
Rule 18, Section 6 - Transitory rules for Offshore Gaming Licensees and Accredited Service Providers (<i>New Provision</i>)	
	<p><u>NOTWITHSTANDING THE PROVISIONS OF REPUBLIC ACT NO. 11590, AN OFFSHORE GAMING LICENSEE OR AN ACCREDITED SERVICE PROVIDER DEFINED UNDER SECTIONS 22(II) AND 27(G) OF THE CODE, AS AMENDED, DULY REGISTERED WITH, AND ENJOYING INCENTIVES GRANTED BY AN IPA UNDER ITS CHARTER PRIOR TO THE EFFECTIVITY OF THIS ACT, SHALL CONTINUE TO ENJOY SAID INCENTIVES UNTIL THE EXPIRATION OF THE TRANSITORY PERIOD IN SECTION 311 OF THE CODE, AS IMPLEMENTED BY SECTIONS 1, 2, AND 3 OF THIS RULE, OR THE EXPIRY OF THE LICENSE OR ACCREDITATION OF THE REGISTERED ENTERPRISE, WHICHEVER COMES EARLIER; PROVIDED THAT, SAID OFFSHORE GAMING LICENSEES AND</u></p>

Original IRR	Amended IRR
Rule 18, Section 6 – Transitory rules for Offshore Gaming Licensees and Accredited Service Providers (<i>New Provision</i>)	
	<u>ACCREDITED SERVICE PROVIDERS SHALL THEREAFTER BE SUBJECT TO THE APPLICABLE TAXES UNDER REPUBLIC ACT NO. 11590 AND ITS IMPLEMENTING RULES AND REGULATIONS.</u>

Source:

CREATE Amended Implementing Rules and Regulations

[https://firb.gov.ph/download/create-irr-](https://firb.gov.ph/download/create-irr-amendments/?wpdmdl=2382&refresh=61a83103536311638412547)

[amendments/?wpdmdl=2382&refresh=61a83103536311638412547](https://firb.gov.ph/download/create-irr-amendments/?wpdmdl=2382&refresh=61a83103536311638412547)