

Advisory on Changes on the Income Tax Rates Pursuant to the CREATE Act

PAGE NOS.

REVENUE REGULATIONS NO. 5-2021
Implementing the New Income Tax Rates
on the Regular Income of Corporations,
on Certain Passive Incomes, Including
Additional Allowable Deductions from Gross
Income of Persons Engaged in Business or
Practice of Profession Pursuant to RA No.11534
or the "Corporate Recovery and Tax Incentives
for Enterprises Act", Which Further Amended the
National Internal Revenue Code (NIRC) of 1997.

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BUREAU OF INTERNAL REVENUE
REVENUE REGULATIONS
NO. 5-2021

Implementing the New Income Tax Rates on the Regular Income of Corporations, on Certain Passive Incomes, Including Additional Allowable Deductions from Gross Income of Persons Engaged in Business or Practice of Profession Pursuant to Republic Act (RA) No.11534 or the “Corporate Recovery and Tax Incentives for Enterprises Act” (CREATE), Which Further Amended the National Internal Revenue Code (NIRC) of 1997.

Corporate Income Tax Rates

Type of Corporation	Higher between RCIT against MCIT			
	RCIT		MCIT	
	Rate	Effectivity	Rate	Effectivity
Domestic Corporations				
In general	25%	July 1, 2020	1%	July 1, 2020 to June 30, 2023
			2%	July 1, 2023
For corporations with: i. Net taxable income not exceeding P5,000,000; and ii) Total assets not exceeding P100,000,000 (excluding land where the office and PPE are situated)	20%	July 1, 2020	1%	July 1, 2020 to June 30, 2023
			2%	July 1, 2023
Proprietary educational institutions and hospitals	1%	July 1, 2020 to June 30, 2023	Not applicable	
	10%	July 1, 2023		
Foreign Corporations (on taxable income derived from all sources w/in the Philippines)				
Resident foreign corporations	25%	July 1, 2020	1%	July 1, 2020 to June 30, 2023
			2%	July 1, 2023

Type of Corporation	Higher between RCIT against MCIT			
	RCIT		MCIT	
	Rate	Effectivity	Rate	Effectivity
Offshore banking units	25%	Upon effectivity of CREATE	1%	Upon effectivity of CREATE until June 30, 2023
			2%	July 1, 2023
Regional operating headquarters	25%	January 1, 2022	1%	January 1, 2022 to June 30, 2023
			2%	July 1, 2023
Non-resident foreign corporations	25%	January 1, 2021	Not applicable	

In applying the above income tax rates, the following must be taken into account:

- MCIT is imposed beginning on the 4th taxable year immediately following the year of commencement of business operations (if greater than RCIT for the taxable year);
- Domestic corporations shall account **separately in the AFS** the cost of the land where the office and PPE are situated and shall not lump the same in one account title nor consolidate its cost with other fixed assets;
- For proprietary educational institutions or hospitals, in case the gross income from "unrelated trade, business or other activity" exceeds 50% of the total gross income derived by such educational institutions or hospitals from all sources, the tax prescribed for domestic corporations shall be imposed;
- GOCCs, agencies and instrumentalities, except GSIS, SSS, HDMF, PHIC, and the local water districts, shall pay such rate of tax upon their taxable income as are imposed upon corporations or associations engaged in a similar business, industry, or activity.

Income Tax Rates on Certain Passive Income

Type of Individual/ Corporation	Nature of Income	Rate	Effectivity
Non-resident alien individual	Winnings from PCSO amounting to more than P10,000	20%	Upon effectivity of CREATE
	Winnings from PCSO amounting to P10,000 and below	Exempt	
Domestic corporation	Intercompany Dividends (domestic and foreign source dividends)	EXEMPT (from DC)	For foreign source dividends, these will be exempt from income tax upon effectivity of CREATE, subject to the conditions under Sec. 5 of RR No. 5-2021
		25% / 20%, as the case may be (from NRFC)	
Resident Foreign Corporation	Interest income from depositary bank under the expanded foreign currency deposit system	15%	Upon effectivity of CREATE
	Capital gains from sale of shares of stock not traded in the stock exchange	15%	
Non-resident Foreign Corporation	Gross income received from all sources within the Philippines, except capital gains from sale of shares of stock not traded in the stock exchange	25%	January 1, 2021

Type of Individual/ Corporation	Nature of Income	Rate	Effectivity
Non-resident Foreign Corporation	Intercorporate dividends from a DC (in general)	25%	January 1, 2021
	Intercorporate dividends from a DC if the country in which the NRFC is domiciled allows a tax credit against the taxes of the NRFC deemed to have been paid in the Philippines	10% tax credit	
	Capital gains from the sale of shares of stock not traded in the stock exchange	15%	Upon effectivity of CREATE

Income Tax Exemption of Foreign Sourced Dividends by Domestic Corporations

General Rule: Subject to income tax

Exception: Exempt if all the following conditions concur:

- Dividends actually received are reinvested in the business operations of the domestic corporation within the next taxable year from receipt;
- Dividends received shall only be used to fund the working capital requirements, capital expenditures, dividend payments, investment in domestic subsidiaries, and infrastructure project; and
- The domestic corporation holds directly at least 20% **in value** of the outstanding shares of the foreign corporation and has held the shareholdings uninterrupted for a minimum of 2 years at the time of the dividends distribution.

In case the foreign corporation has been in existence for less than 2 years at the time of dividends distribution, then the domestic corporation must have continuously held directly at least 20% in value of the foreign corporation's outstanding shares during the entire existence of the corporation.

Requirements for Availment:

- Submissions during the year of receipt of dividends:

Document	Sworn Statement/Affidavit	Sworn Certification
Responsible Person	Corporate Officers	Independent Auditor
Period	Submitted to the BIR within 30 calendar days from actual receipt of dividends	Attached to the AFS in the year of receipt of the dividend
Contents	<ul style="list-style-type: none"> ➤ Fact of actual receipt of such dividends ➤ Amount and source (the NRFC) of such dividends (including the shareholdings and the holding period at the time of dividend distribution) 	
	<ul style="list-style-type: none"> ➤ Statement that they shall fully comply with the conditions of the exemption 	<ul style="list-style-type: none"> ➤ Fact that the domestic corporation, through its Board, has appropriated or has a plan to reinvest the dividends in its business operations to fund its working capital requirements, capital expenditures, dividend payments, investment in domestic subsidiaries, or infrastructure project; ➤ If any amount has been disbursed, a statement that said disbursement complies with the requirements.

The Sworn Statement/Affidavit and Independent Auditor Sworn Certification shall be deemed as **substantial compliance** with the conditions for exemption without the need for securing a written tax exemption ruling/certificate from the BIR.

A disclosure of the dividends in the AFS (which shall be attached to the AITR) as well as the amount of dividend deemed exempt from income tax shall be declared in reconciliation part of the said AITR.

- Submissions in the immediately following taxable year: a **Sworn Certification** by the Independent Auditor, attached to the AITR, on the utilization/non-utilization of the dividends received.
 - If utilized – the certification shall confirm full compliance with the conditions for exemption
 - If unutilized – the certification will state the non-utilization and the unutilized dividends shall be declared as taxable income
- No credit/deduction under Section 34(C) of the 1997 NIRC, as amended, shall be allowed in relation to exempt foreign sourced dividends. Any foreign tax paid or incurred in relation to exempt foreign sourced dividends shall be disregarded in computing the limitations provided under Section 34(C)(4) of the 1997 NIRC, as amended.

Improperly Accumulated Earnings Tax

IAET shall **no longer be imposed** and shall apply to the entire taxable year for all fiscal/taxable years ending after the effectivity of CREATE.

Allowable Deductions from Gross Income for Business Persons

Revisions in allowable deductions are as follows:

Item of Deduction	Revision/Change
Expenses (Ordinary and necessary trade, business, or professional expenses)	Additional ½ of the value of labor training expenses incurred for skills development of enterprise-based trainees, PROVIDED: <ul style="list-style-type: none"> ➤ The enterprise shall secure proper certification from DepEd, TESDA, or CHED; ➤ Not to exceed 10% of direct labor wage
Interest	Reduction allowable deduction for interest expense <ul style="list-style-type: none"> ➤ For corporations - reduction of 20% effective on July 1, 2020 ➤ Other domestic corporations¹ - reduction of 0% ➤ For individuals engaged in business or practice of profession - reduction shall take effect upon effectivity of CREATE

Non-Recognition of Gain or Loss on Exchange of Property

No gain or loss shall be recognized:

- on a corporation or on its stock or securities if such corporation is a party to a reorganization and exchanges property in pursuance of a plan of reorganization solely for stock or securities in another corporation that is a party to the reorganization;
- if property is transferred to a corporation by a person, alone or together with others, not exceeding four (4) persons, in exchange for stock or unit of participation in such a corporation of which as a result of such exchange, the transferor or transferors, collectively, gains or maintains control of said corporation: Provided, that stocks issued for services shall not be considered as issued in return for property

¹ with net taxable income not exceeding P5,000,000 and total assets not exceeding P100,000,000, excluding the land on which the particular business entity's office, plant and equipment are situated

The above sale or exchanges of property shall also not be subject to VAT. In all of the foregoing instances of exchange of property, **prior BIR confirmation or tax ruling shall not be required** for purposes of availing of the tax exemption. The concerned parties can implement the transaction including, but not limited to, the issuance of the CAR by the RDO where the property is located, in case of real properties, or to the RDO where the business is registered, in case of shares of stocks, subject to post-transaction audit by the Bureau.

Transitory Rates

Interest Arbitrage

Annual Accounting Period	Regular Corporate Income Tax Rates	Other DCs ²
	30% / 25%	30% / 20%
FY 07-31-20	31.92%	30.25%
FY 08-31-20	30.83	27.50
FY 09-30-20	29.75	24.75
FY 10-31-20	28.67	22.00
FY 11-30-20	27.58	19.25
CY 12-31-20	26.50	16.50
FY 01-31-21	25.42	13.75
FY 02-28-21	24.33	11.00
FY 03-31-21	23.25	8.25
FY 04-30-21	22.17	5.50
FY 05-31-21	21.08	2.75
FY 06-30-21	20.00	0.00

² with net taxable income of not more than P5,000,000 and total assets of not more than P100,000,000, exclusive of land

Income Tax

Annual Accounting Period	Regular Corporate Income Tax Rates	Other DCs ³	MCIT	Proprietary Non-Profit Educational Institutions / Hospitals
	30% / 25%	30% / 20%	2% / 1%	10% / 1%
FY 07-31-20	29.58%	29.16%	1.91%	9.25%
FY 08-31-20	29.16	28.33	1.82	8.50
FY 09-30-20	28.75	27.50	1.73	7.75
FY 10-31-20	28.33	26.66	1.64	7.00
FY 11-30-20	27.92	25.83	1.55	6.25
CY 12-31-20	27.50	25.00	1.50	5.50
FY 01-31-21	27.08	24.16	1.41	4.75
FY 02-28-21	26.66	23.33	1.32	4.00
FY 03-31-21	26.25	22.50	1.23	3.25
FY 04-30-21	25.83	21.67	1.14	2.50
FY 05-31-21	25.41	20.83	1.05	1.75
FY 06-30-21	25.00	20.00	1.00	1.00

For taxpayers who have already filed their income tax returns for taxable year 2020 (calendar year 2020; fiscal year ending from July 31, 2020 to fiscal year ending February 28, 2021) may amend their income returns using the transitory rates per above matrix, and any resulting excess/overpayment can be claimed for refund or carried over to the next taxable year, at taxpayers' option.

Source:

Revenue Regulations No. 5-2021

³ with net taxable income of not more than P5,000,000 and total assets of not more than P100,000,000, exclusive of land