

# Quisumbing Torres - Recent Updates Affecting the Wealth Management Industry - Philippines

With a number of key legislative changes recently implemented in the country, namely that of the passing of the CREATE Act, those practitioners operating in the Philippines are wise to ensure they are caught up with what the changes may mean for them. Thankfully, Quisumbing Torres' Kristine Mercado-Tamayo and Selynn Co are on hand to bring those interested parties up to speed.



**BY:**

**KRISTINE MERCADO-TAMAYO,**

Partner, Quisumbing Torres

**SELYNN CO,**

Junior Associate, Quisumbing Torres

## **CORPORATE RECOVERY AND TAX INCENTIVES FOR ENTERPRISES ACT (CREATE ACT)**

### **CREATE Act passed into law**

On 26 March 2021, the CREATE Act was passed into law, with the purpose of granting tax relief and assistance for corporations in financial need, as part of the current administration's Comprehensive Tax Reform Program. The CREATE Act amends the National Internal Revenue Code of 1997, which was previously amended by Republic Act No. 10963 or the Tax Reform for Acceleration and Inclusion Law.

Below are a few notable changes under the law.

#### **A. Income tax**

Pursuant to the CREATE Act, the corporate income tax rate for both domestic and foreign corporations was reduced from 30% to 25% beginning 1 July 2020. Where a domestic corporation's net income does not exceed PhP 5 million and its total assets do not exceed PhP 100 million (excluding land on which its business is conducted), the tax rate is 20%.

The CREATE Act also amended the minimum corporate income tax (**MCIT**) rate from 2% to 1% effective 1 July 2020 until 30 June 2023. The MCIT is applicable to domestic and resident foreign corporations, and applies where the calculated MCIT imposed on gross income exceeds the regular corporate income tax imposed on taxable income.

#### **B. Tax-free exchanges**

The CREATE Act also expands the scope of tax-free exchanges or reorganizations involving the following transactions:

- i. a corporation, which is a party to a merger or consolidation, exchanges property solely for stock in a corporation, which is a party to the merger or consolidation;
- ii. the acquisition by one corporation, in exchange for its shares, where immediately after the acquisition, the acquiring corporation has control of the other corporation;

iii. the acquisition by one corporation, in exchange for its shares, of substantially all of the properties of another corporation;

iv. recapitalization; and

v. reincorporation.

A confirmatory ruling from the Bureau of Internal Revenue (**BIR**) is no longer required for the purpose of benefiting from the tax exemption for tax-free exchanges.

## **COVID-19 – SPECIAL TAX RESIDENCY RULES**

### **The BIR issues special tax residency rules**

Due to the continuous implementation of varying types of quarantine in the Philippines and travel restrictions imposed by the Philippines and other foreign governments, the BIR issued Revenue Memorandum Circular No. 83-2020 (**RMC**) to address tax issues relating to cross-border workers who are stranded or forced to quarantine in a country which is not their country of residence, thereby creating unintended permanent establishment risks to employers as a consequence of the continued presence of employees in the Philippines. Under the Philippines' tax treaties, the employment income of a non-resident may be taxed where the non-resident is present in the Philippines for more than 183 days in a given taxable year, or where a non-resident employer has a permanent establishment in the Philippines.

The BIR issued these special tax residency rules to mitigate unwanted tax burdens and issues related to reporting and filing obligations.

For non-residents forced to stay in the Philippines, the BIR confirmed that it will treat such forced stays as *force majeure* for the purpose of determining their residence, provided they leave the Philippines as soon as the travel restrictions are eased.

As to the inadvertent creation of a permanent establishment, the BIR clarified that working from home by employees of foreign enterprises will not create a permanent establishment of the employer, because this conduct of business activities lack a degree of permanency and because the home office would not be at the disposal of the foreign enterprise. However, this is subject to the discontinuance of the use of the home office after the Covid-19 crisis.



## COVID-19 – EXEMPTION OF RETIREMENT BENEFITS FROM TAXES

### Retirement benefits received in 2020 exempt from taxes

As a response to the Covid-19 pandemic, Republic Act No. 11949 exempted from tax retirement benefits received by officials and employees of private firms from 5 June 2020 until 31 December 2020. This is subject to the condition that no re-employment in the same firm will occur within the succeeding twelve-month period. The guidelines issued by the BIR also require that the retirement benefits be paid out pursuant to an existing plan registered with the BIR. The BIR has confirmed that the regular requirements relating to tenure of service and age, which are required for tax exemption under the Philippine Tax Code, do not apply. However, to obtain the tax exemption, both the retirement date and the date of the payment of benefits must be within the specified exemption period.

## LAW EXTENDING THE ESTATE TAX AMNESTY

### Law passed extending the estate tax amnesty

The Republic Act No. 11213 or the Tax Amnesty Act was signed into law on 14 February 2019. This included provisions for an estate tax amnesty with respect to persons who died on or before 31 December 2017, with or without assessments duly issued, and whose estate taxes have remained unpaid

or have accrued as of 31 December 2017. Under BIR regulations, the estate tax amnesty could be availed of until 14 June 2021. This was extended by the BIR from the original April 2020 deadline prior to the onset of the Covid-19 pandemic.

On 28 June 2021, the President signed into law Republic Act No. 11569 amending the Tax Amnesty Act to extend the estate tax amnesty for two years or until 14 June 2023.

## RULES OF PROCEDURE IN RELATION TO THE ANTI-MONEY LAUNDERING ACT (AMLA)

### Supreme Court and Court of Appeals issue rules of procedure in relation to the AMLA.

On 15 May 2021, the Court of Appeals issued A.M. No. 21-03-05-CA or the Rules of Procedure in Cases of Bank Inquiry into or Examination of Deposit and Investment Accounts Relating to an Unlawful Activity or a Money Laundering Offense under Republic Act No. 9160, as amended. Under these rules, the Anti-Money Laundering Council (AMLC), through the Office of the Solicitor General (OSG), may file with the court an *ex parte* application for inquiry into particular deposit or investment accounts, including related accounts, when it has been established that there is a probable cause that these accounts are related to an unlawful activity or a money laundering offense.

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Under the rules, the court must decide about the application within 24 hours of receipt. The bank inquiry order will be effective for 120 days reckoned from the receipt by the AMLC, subject to an extension not exceeding 120 days.

The rules became effective on 31 May 2021.

Together with these rules, on 31 May 2021, A.M. No. 21-03-13-SC or the *Rule on Asset Preservation, Seizure, and Forfeiture in Criminal Cases under Republic Act No. 9160, as amended*, issued by the Supreme Court, also took effect. Previously, only A.M. 05-11-04-SC or *Rules of Procedure in Cases of Civil Forfeiture, Asset Preservation and Freezing of Monetary Instrument, Property, or Proceeds Representing, Involving, or Relating*

*to an Unlawful Activity or Money Laundering Offense under Republic Act No. 9160*, as amended, had been promulgated by the Supreme Court.

The Supreme Court's rules were issued to address the lack of clear-cut rules on the forfeiture of property used to commit an unlawful activity or money laundering offense. Under the rules, the prosecution may pursue asset forfeiture by an allegation that it will proceed against the subject of the crime or offense, or their proceeds or fruits. The rules also allow the ex parte issuance of a Provisional Asset Preservation Order at any time after the filing of the criminal information alleging asset forfeiture or in cases where the properties have been seized by virtue of a search warrant or warrantless arrest. ■

#### CONTACT THE AUTHOR

**Kristine Mercado-Tamayo**

[kristine.mercado-tamayo@quisumbingtorres.com](mailto:kristine.mercado-tamayo@quisumbingtorres.com)

+63 2 8819 4955

**Selynn Co**

[selynnalexis.co@quisumbingtorres.com](mailto:selynnalexis.co@quisumbingtorres.com)

+63 2 8819 4931

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