

# Quisumbing Torres Sheds Light on Upcoming Changes to Philippine Tax Legislation

As businesses and practitioners around the region begin to emerge from their make-shift home offices, many may find themselves in need to catch up on the latest regulatory and legislative developments which have been brewing throughout what has been an unusual year. Baker McKenzie's Philippines member firm Quisumbing Torres offers those who need to be in the know insights into the upcoming changes occurring in the Philippines from a taxation perspective, elucidating on the forthcoming amendments and proposals surrounding income tax, digital economy taxation and tax amnesty, helping to ensure that those in and attached to the country are not caught off guard.



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## **1. PROPOSED CORPORATE INCOME TAX RATIONALISATION ACT (CITIRA), LATER RENAMED AS CORPORATE RECOVERY AND TAX INCENTIVES FOR ENTERPRISES ACT (CREATE).**

On September 10, 2019, the House of Representatives approved House Bill (HB) No. 4157 entitled "Corporate Income Tax Rationalisation Act" (**CITIRA Bill**) as part of the tax reform program of the government. On February 17, 2020, Senate Bill (**SB**) No. 1357 was submitted by the Senate Committee on Ways and Means.

Because of the pandemic, the Philippine government seeks to accelerate the proposed reforms to the corporate tax system. The Department of Finance proposes to recalibrate the CITIRA Bill "to make it more relevant and responsive to the needs of businesses negatively affected by the COVID-19 pandemic, and to improve the ability of the Philippines to attract highly desirable investments that will serve the public interest."

The CITIRA Bill, now CREATE, has been certified as urgent by President Rodrigo Duterte on 9 March 2020.

Below are the proposed amendments under CREATE:

- An immediate 5 percentage point cut in the corporate income tax rate starting July 2020. The corporate income tax rate will then be further reduced by 1 percentage point every year from 2023 to 2027.
- A sunset period of 4 to 9 years for registered business activities enjoying the 5 percent tax on gross income earned incentive.
- President's power to modify the mix of incentives (i.e., fiscal and non-fiscal incentives) for highly desirable projects or specific industrial activities to create high-value jobs and attract significant foreign capital or investment. This is in addition to the power to modify the period or manner of availment of incentives for any highly desirable project.



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## **2. PROPOSED BILL ON DIGITAL ECONOMY TAXATION**

The Committee on Rules of the House of Representatives is currently deliberating on HB No. 7425 or the proposed "Value-added Tax on Digital Transactions Act." HB No. 7425 substitutes HB No. 6765 and HB No. 6944.

### **Previous Bills – HB No. 6765 and HB No. 6944**

On 19 May 2020, HB No. 6765 was filed in Congress, seeking the enactment of a law entitled the Digital Economy Taxation Act of 2020. HB No. 6765 sought to place the supply of goods and services through the use of electronic or digital means, including those supplied by non-residents, under the ambit of Philippine taxation, particularly income tax and value-added tax (VAT). HB No. 6765 proposed to place non-residents under the jurisdiction of the BIR by allowing non-residents to provide digital services, but only through a representative office or an agent that must be a corporation resident in the Philippines.

Subsequently, on 3 June 2020, HB No. 6944 was also filed in Congress. HB No. 6944 proposed to impose on all digital service providers a digital service tax of 6% of their gross sales from digital services rendered to Philippine-based consumers.



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**HB No. 7425 provides that a “digital service provider” refers to a service provider of a digital service or goods to a buyer, through operating an online platform for purposes of buying and selling of goods or services or by making transactions for the provision of digital services on behalf of any person.**

The Committee of Ways and Means of the House of Representatives has approved HB No. 7425 to substitute HB Nos. 6765 and 6944.

### **HB No. 7425**

HB No. 7425 replaces HB No. 6765 and HB No. 6944, and is currently being deliberated on by the Committee on Rules of the House of Representatives.

HB No. 7425, similar to HB No. 6765, expands the definition of VAT to include the sales of goods and services including those which are electronic in nature. Specifically, the bill seeks to amend Section 108 of the National Internal Revenue Code to include the following activities as further examples of sale or exchange of services subject to VAT:

- The supply by any resident or non-resident person of digital services such as online advertisement services,

provision for digital advertising space, and any other facility or service for the purpose of online advertisement;

- The supply by any resident or non-resident person of digital services in exchange for a regular subscription fee over the usage of the said product or service; and
- The supply of electronic and online services that can be delivered through an information technology infrastructure, such as the internet.

HB No. 7425 provides that a “digital service provider” refers to a service provider of a digital service or goods to a buyer, through operating an online platform for purposes of buying and selling of goods or services or by making transactions for the provision of digital services on behalf of any person. A “buyer” refers to any person who resides in the Philippines, who acquires taxable digital services in the Philippines, either for personal consumption or for use in trade or business.

Under the current bill, a non-resident digital service provider is liable for assessing, collecting and remitting the VAT that go through its platform. Such digital service provider shall be liable for the sale of goods or services through an online platform, to a buyer who resides in the Philippines and who acquires taxable services in the Philippines.

A non-resident digital service provider is liable to register for VAT, where his gross sales or receipts in the past 12 months exceeds Php 3 million, or there are reasonable grounds to believe that his gross sales or receipts in the next 12 months will exceed Php 3 million. A VAT-registered non-resident digital service provider may issue electronic invoices or receipts. Where a non-resident digital service provider is not duly-registered with the BIR, payments made to such service provider shall be subject to a 12% withholding tax at the time of payment.

### **3. EXTENSION OF DEADLINE TO AVAIL OF TAX AMNESTY**

On June 15, 2020, the BIR issued Revenue Memorandum Circular No. 61-2020 extending the deadline to avail of the Tax Amnesty on Delinquencies, which was originally set on June 22, 2020, to December 31, 2020.

Subsequently, the BIR issued Revenue Regulations 15-2020 on June 19, 2020 reiterating the extension and qualifying such by stating that further extensions may be made if the circumstances warrant due to country-wide economic or health reasons. ■