

# CREATE MORE x DIGITAL TAX

A Guide to Recent Tax Developments

March 20, 2024



**HOUSE BILL NO. 9794**  
CREATE MORE Bill

## HOUSE BILL NO. 9794



Corporate Recovery and Tax Incentives for Enterprises to Maximize Opportunities for Reinvigorating the Economy or the "CREATE MORE"



Aims to enhance the Philippine tax incentives policy and administration



Authored by **Congressman Joey Salceda**

Pending with the **House Committee on Ways and Means**

## House of Representatives

**18 March 2024**

- › Approved on **Third Reading**
- › In substitution of HB No. 8968

## Bicameral Conference Committee

- › Reconciles the conflicting provisions from both the House and Senate bills

## Department of Finance

- › Promulgation of IRR within 90 days from effectivity

- › For further debates, deliberations, and amendments

Senate

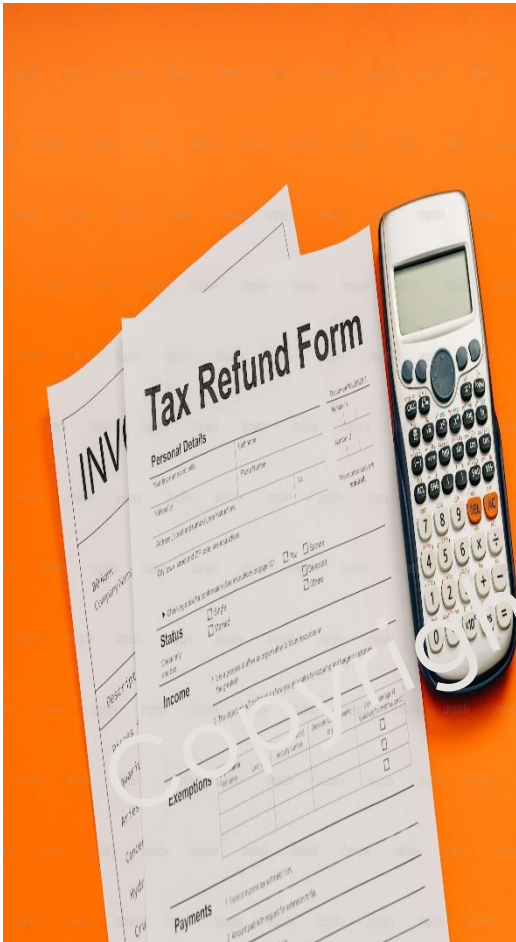
- › For approval and signature
- › May veto provisions of the proposed law
- › Lapse into law if not acted upon within 30 days from receipt

President



# PROPOSED SALIENT AMENDMENTS

## Refund of Taxes – Excess Input Tax



### Proposed Insertion:

- ☑ Documents prescribed by the CIR in support of refund shall be exhaustive, not subject to modification, and limited to those required by law.
- ☑ Establish a refund lane and a threshold for automatic grant claims to expedite low-risk claims; Low-risk claims are not subject to verification while medium-risk claims are subject to minimal verification.
- ☑ Denial of refund shall entitle the taxpayer to file a Request for Reconsideration within 10 days before becoming final.
- ☑ Denial may cause the adjustment of risk classification of a taxpayer.
- ☑ Establish a simplified and streamlined tax refund system in consultation with COA

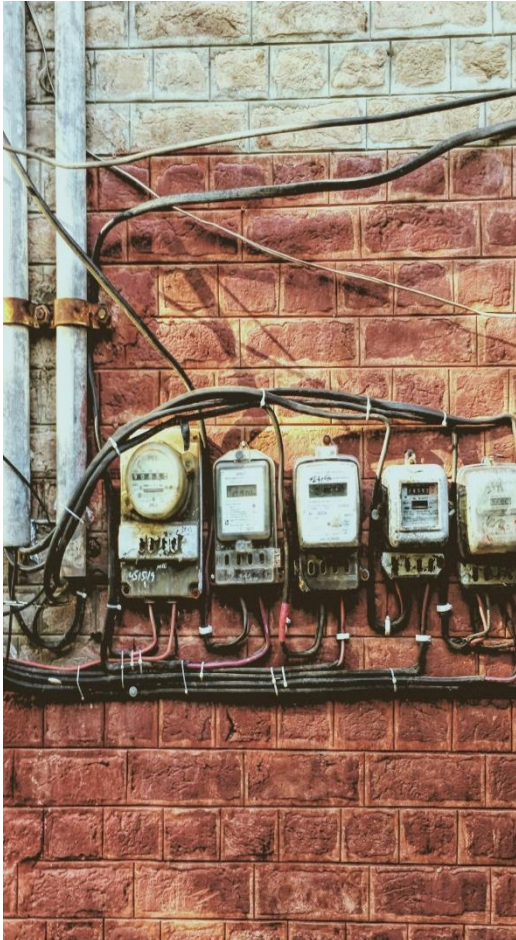
## Incentives – Enhanced Deductions



### Proposed Insertion:

- ☑ Election of Enhanced Deductions Regime will allow the application of the **20% tax on taxable income** from registered projects/activities in addition to the enhanced deductions

## Incentives – Enhanced Deductions



Increased enhanced deductions:

Deduction	CREATE	CREATE MORE
Power expense	50% additional deduction	<b>100%</b> additional deduction
Expenses on trade fairs, exhibitions or trade missions	<i>No existing provision</i>	<b>100%</b> additional deduction
NOLCO	Carry-over for 5 years from last year of loss	Carry-over for 5 years from last year of ITH entitlement



## Incentives – Registered Business Enterprise Local Tax and Special Visas



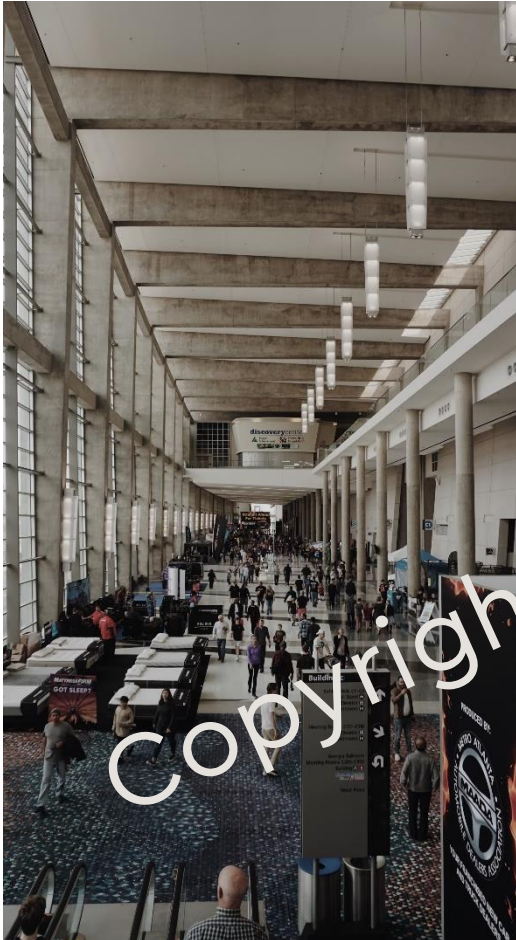
### Proposed Insertion for RBELT:

- ☑ Imposition of RBELT *in lieu* of all local taxes under the LGC at the rate of 2% of gross sales
- ☑ Available to RBEs availing of:
  - ITH or ED
  - SCIT but to be imposed only after the SCIT entitlement period

### Proposed Insertion for Special Visas:

- ☑ IPAs may issue:
  - Special Skills Visa
  - Executive Working Visa

## Conditions for Availment of Incentives



### Proposed Insertion:

- ☑ Conditions on additional deduction on expenses relating to trade fairs, exhibitions, or trade missions
- ☑ Foreign corporations may retain SCIT or shift to ED if subject to **global minimum tax or restrictions against BEPS**
- ☑ IPAs may authorize the importation of capital equipment, raw materials, spare parts, or accessories pending issuance of a COR subject to posting of bond

## Conditions for Availment of Incentives



### Proposed Insertion:

- ☑ VAT exemption on importations and VAT zero-rating on local purchases of goods and services refers to those that are **directly attributable** to the registered project or activity
- ☑ VAT exemption/zero-rating is subject to the following rules:

Transaction	VAT Treatment
Sale of goods/services to an RBE whose total sales are exported	VAT-exempt
Sale of goods/services by a VAT-registered seller to a registered EE with export sales less than 100%	VAT zero-rated
Sale of goods to a registered entity within a separate customs territory	VAT zero-rated

## Conditions for Availment of Incentives



### Proposed Insertion:

- ☑ Sale of VAT-exempt imported capital equipment, raw materials, spare parts, and accessories shall be subject to the following rules:

Rule	VAT Treatment
Purchaser is a registered EE	VAT zero-rated
Seller is a registered DME	VATable
Seller is a registered DME and the purchaser is a registered EE	VAT zero-rated

- ☑ DMEs with capital of at least P50 Billion (or equivalent USD) and are import-substituting or catering to non-residents may avail of:
  - VAT zero-rating on local purchases; and
  - VAT exemption on importation.

## Conditions for Availment of Incentives



- ☑ The manner of remittance of share of LGU:

CREATE	CREATE MORE
Directly remitted by the RBEs to the LGUs where they are located	Collected by the IPA or BIR and remitted to the LGUs (including the RBELT)

- ☑ If 2 or more LGUs cover the same enterprise:
  - 50% of revenues – shared equally among LGUs; and
  - 50% of revenues – apportioned based on population
- ☑ LGUs may reduce/waive the tax or their share

## Registered Business Enterprises Taxpayer Service



- ✔ Creation of a separate Registered Business Enterprises Taxpayer Service
- ✔ Simplified filing and payment processes

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## Prohibition on Registered Activities



Any registered project/activity conducted outside the zone/freeport shall not be entitled to tax incentives:

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<i>No exception</i>	Except those engaged in IT/BPO services who shall be allowed to have alternative work arrangements which shall not cover more than 50% of total workforce or total work hours

# HOUSE BILL NO. 4122/SENATE BILL NO. 2528

## Digital Services Tax Bill



## SENATE BILL NO. 2528



Amends and adds new sections in the Tax Code in relation to the imposition of 12% VAT on the sale of digital services



Substituted SB No. 250, taking into consideration HB No. 4122



Authored by **Senator Win Gatchalian**

Pending **Second Reading** before the Senate

**House of Representatives**

**15 November 2022**

- › HB No. 4122 (as approved) transmitted to Senate for concurrence

**Bicameral Conference Committee**

- › Reconciles the conflicting provisions from both the House and Senate bills

**Department of Finance**

- › Promulgation of IRR within 90 days from effectivity

**30 January 2024**

- › SB 2528 approved by Committee on Ways and Means and submitted for Second Reading
- › In substitution of SB No. 250, taking into consideration HB No. 4122

**Senate**

- › For approval and signature
- › May veto provisions of the proposed law
- › Lapse into law if not acted upon within 30 days from receipt

**President**

# PROPOSED SALIENT AMENDMENTS

## Definition of Terms



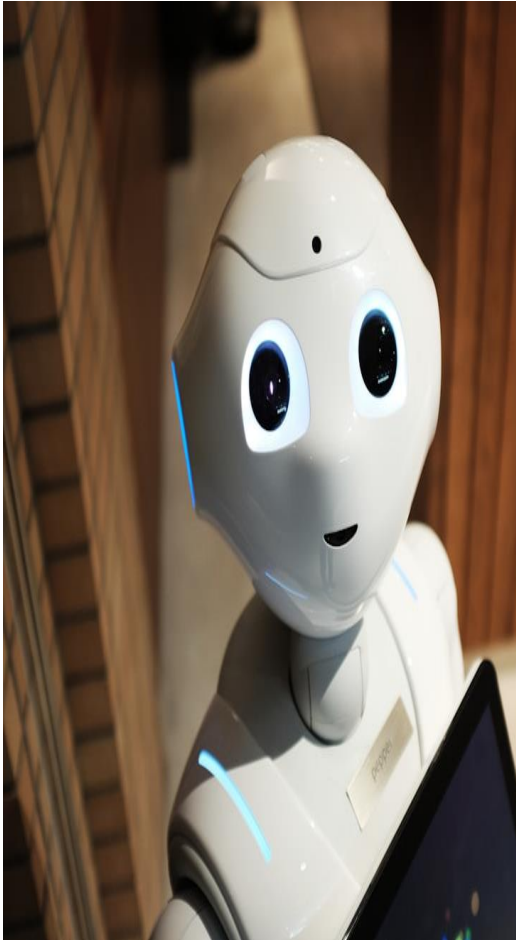
**Digital Service** – Any service supplied over the internet or other electronic network and with the use of IT and where the supply of the service is essentially automated. It shall include, but not limited to:

- ☑ Online search engine
- ☑ Online marketplace/e-marketplace
- ☑ Cloud service
- ☑ Online media and advertising
- ☑ Online platform
- ☑ Digital goods

**Digital Service Provider (DSP)** – A resident or nonresident supplier of digital services to a consumer who consumes digital services subject to VAT in the Philippines.

**Nonresident Digital Service Provider (NDSP)**– A DSP that has no physical presence in the Philippines.

## Persons Liable



Any person who, in the course of trade or business:

- ☑ Sells, barter, exchanges, leases goods or properties; and
- ☑ Renders services, **including digital services**.



Digital services delivered by nonresident digital service providers are considered performed or rendered in the Philippines if the digital services are **consumed in the Philippines**.



The **digital service provider, whether resident or nonresident**, is liable for assessing, collecting, and remitting the VAT on digital services consumed in the Philippines.

## Liability of Nonresident Digital Service Provider

NDSPs required to be registered for VAT under Section 236(G)

Online marketplace or e-marketplace

For digital services consumed in the Philippines by:

- ✓ Non-VAT registered consumers – NDSPs shall be liable for the remittance of VAT; or
- ✓ VAT-registered consumers – reverse charge mechanism shall apply.

Also liable to remit VAT on transactions of nonresident sellers provided that it:

- ✓ sets, either directly or indirectly, any of the terms and conditions under which the supply of goods is made; or
- ✓ is involved in the ordering or delivery of goods, whether directly or indirectly

## Exempt Transactions



Specific transactions exempt from VAT are amended as follows:

- ☑ Educational services will include:
  - Online courses, seminars, and trainings; and
  - Sale of online subscription-based services to DEPED, CHED, TESDA, and educational institutions recognized by the said government agencies.
  
- ☑ Services of bank, non-bank financial intermediaries performing quasi-banking functions, and other non-bank financial intermediaries will include those rendered through the different digital platforms.

## Invoicing and Accounting Requirements



VAT-registered NDSPs must issue a digital sales invoice which shall indicate the following (*in lieu of other invoicing requirements*):

- ☑ Date of the transaction;
- ☑ Transaction reference number;
- ☑ Identification of the customer;
- ☑ Brief description of the transaction;
- ☑ Total amount with indication that it includes VAT; and
- ☑ Break-down of sales between the taxable, zero-rated, and exempt components, if any, with a calculation of the VAT on each portion.

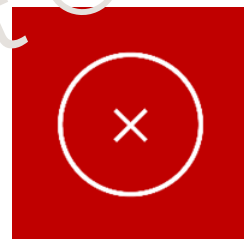
VAT-registered NDSPs are **not required** to maintain regular accounting records and subsidiary journals



## Return and Payment of VAT; Tax Credits

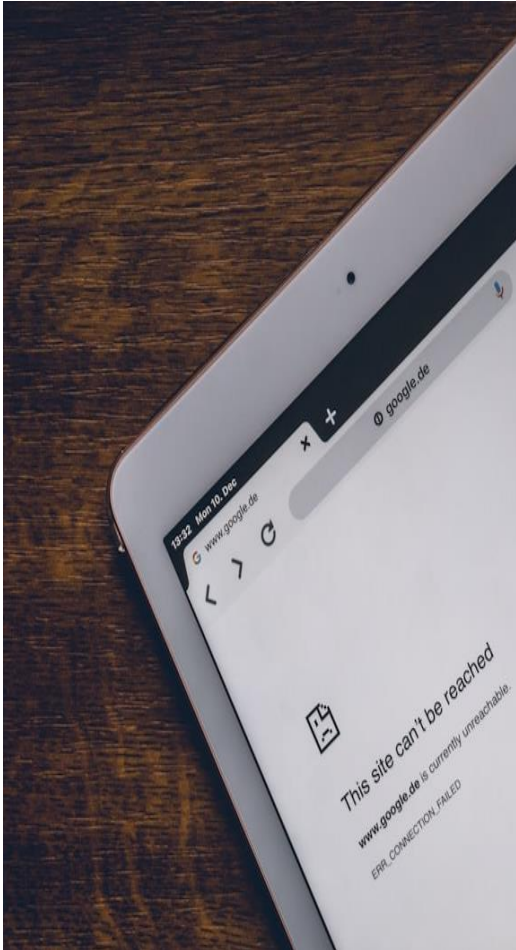


- ☑ Government payments for services to nonresident suppliers who are not registered shall be subject to 12% withholding VAT at the time of payment.
- ☑ VAT-registered taxpayers are required to withhold and remit, within 10 days following the end of the month, the VAT due on its purchases of digital services consumed in the Philippines from NDSPs (**Reverse Charge Mechanism**).



NDSPs are **not allowed** to claim creditable input tax.

## Suspension of Business Operations



The Commissioner of Internal Revenue's power to suspend business operations shall include the **blocking of digital services to the Philippines** by a digital service provider (implemented by the DICT through the NTC).

## Registration Requirements



The following persons are now required to register for VAT purposes:

- ☑ Persons who lease goods or properties, including those digital in nature; and
- ☑ Persons who render services, including digital services.

A **simplified automated registration system** shall be established for NDSP.

Thank you for your attention.

**Locally rooted – Globally connected**