



FIRB Advisory 008-2023

FOR : All Heads of Investment Promotion Agencies (IPAs),
Registered Business Enterprises (RBEs) and Others Concerned

SUBJECT : **Strict compliance with the provisions of Republic Act No. 11534, otherwise known as the Corporate Recovery and Tax Incentives for Enterprises (CREATE) Act**

DATE : 5 May 2023

This Advisory is issued to remind all parties concerned to strictly adhere to all pertinent provisions of the CREATE Act and its amended IRR, especially the proper authority in approving tax incentives.

To reiterate, **only the FIRB has the exclusive power to grant incentives to qualified projects or activities with investment capital of more than one billion pesos (P1,000,000,000.00)** pursuant to Section 297(B) of the National Internal Revenue Code (NIRC) of 1997, as amended by the CREATE Act. IPAs, under a delegated authority, are only authorized to approve tax incentives to qualified projects or activities with investment capital of one billion pesos (P1,000,000,000.00) and below.

In several cases, the Supreme Court has declared that ***ultra vires acts, or those done contrary to law and beyond the scope of one's authority, are null and void and cannot be given any effect.*** They cannot serve as bases of a court action nor acquire validity by ratification. Thus, IPA's approval of tax incentives to projects or activities beyond its delegated authority will subject the said RBEs to assessment of all tax incentives availed including interest and penalties by the Bureau of Internal Revenue and/or Bureau of Customs.

Likewise, any government officer, employee, or private person found to have disregarded said provisions of law either willfully or inadvertently may be subjected to possible administrative and/or criminal liabilities under existing laws such as the 2017 Revised Rules on Administrative Cases in the Civil Services (RRACCS), Anti-Graft and Corrupt Practices Act, and the Revised Penal Code.

For strict guidance. Thank you.


JUVY C. DANOFRATA
Assistant Secretary of Finance
Head of the FIRB Secretariat