

FIRB orders investments board to complete SIPP by end-Jan.

THE Fiscal Incentives Review Board (FIRB) has directed the Board of Investments (BoI) to finalize the Strategic Investment Priority Plan (SIPP) this month in order to clarify which investors are eligible for perks under the Corporate Recovery and Tax Incentives for Enterprises (CREATE) Act.

"Once the categories are identified, the next step is for each of the investment promotion agencies (IPAs) to identify the specific companies they want to invite, and then discuss with them what it would take for them to invest in the country," Finance Secretary Carlos G. Dominguez, III said in an inter-agency meeting held last month.

The SIPP will list industries that will qualify for incentives under CREATE Law, Mr. Dominguez said. Finalizing the list will be the first step in attracting potential investors, he added.

Currently, a transitional SIPP is in effect, based on the 2020 Investment Priorities of the BoI.

Mr. Dominguez said the investment priorities must incorporate what has been learned during the pandemic about disruptions to the export industry.

"COVID-19 heavily disrupted the supply chains, causing sizable declines in world trade during its peak," he said.

"Manufacturing particularly took a major hit during the pandemic. Services exports, such as the business process outsourcing sector, which relied not only on chips, but on

the digital economy to deliver its services, remained resilient," he added.

Mr. Dominguez is bullish that US will post strong growth, but cautioned that China's growth may not be as robust.

He said export strategies should be geared towards crisis-proof industries.

"I don't know exactly which products have to be redirected, but essentially industry and government have to sit down and look at what the future is emerging. We may have to change our strategies," he said.

CREATE was passed in March 2021. It reduced the corporate income tax to 25% and streamlined fiscal incentives. — **Luz Wendy T. Noble**



Senators considering arguments on online platforms' accountability

SENATORS heard testimony on how online platforms should handle disinformation and harmful messages on Wednesday, diving into possible freedom-of-speech issues and the removal of immunity protections currently enjoyed by such platforms under US law should they host damaging content.

At a hearing of the Senate Committee on Constitutional Amendments and Revision of Codes, Maria A. Ressa, Rappler chief executive officer and Nobel Peace Prize laureate, raised the issue of potential censorship if content is curtailed, but instead called for greater policing of algorithms, which have the power to amplify even messages that are clearly disinformation.

"...it's not about the content, it's about the operating system run by algorithms," she said. "Don't intervene in the content because then you can actually be accused of censorship. But if you go to the algorithms of amplification... everyone can say what they think, but what your neighbor said never reached broadcast scale until today, because there have been no guard rails on the distribution of lies."

Minority Leader Franklin M. Drilon cited the position taken by Retired Associate Justice Antonio T. Carpio, who believes that online platforms should be considered publishers and that they should disclose the real identities of people who post the content.

The platform-publisher distinction Mr. Carpio made tracks the debate in the US over Section 230 of the United States Communications Decency Act, which currently renders website platforms immune should third-party content posted on the platform prove to be damaging. Publishers, on the other hand, are held responsible for all content appearing on their publications or sites.

"We are grappling with solutions here," Mr. Drilon said. "As in every freedom, there should be responsibility."

The quick solution, Ms. Ressa, said is to hold platforms accountable for what they allow to spread. "When you do that, I bet you that you would automatically see a shrinking of information operations."

She was referring to disinformation campaigns that seek to game social-media algorithms in order to reach targeted audience more effectively, which have allegedly influenced the outcome of elections worldwide.

Roy Abrams, law enforcement manager for Asia Pacific at Meta Platforms, Inc., formerly known as Facebook, said the company's concern is not to be seen as "the arbiters of truth, (because) that's not our role in society... that's why we employ businesses like Rappler to be our third-party fact-checker."

Rappler and Vera Files were appointed Facebook's Philippine fact checkers in 2018. Their role includes evaluating flagged posts for the quality of the information contained, and issuing a ruling on whether claims are true, false, or misleading.

"When it comes to hate speech, we don't allow it, and quite frankly the algorithms that we're talking about, there's nothing inherently evil about it," Mr. Abrams added, noting that algorithms helped numerous small businesses in the Philippines survive the pandemic and rid the country of terror-related content. "But it is true that we have to continue to improve on them."

Jean-Jacques Sahel, Asia-Pacific Information policy lead at Google, said: "We have to maintain this careful balance between the internet being a place for free expression... but also make sure that we preserve user safety, that we make it a safe place," he said. — **Alyssa Nicole O. Tan**

Public transport ban on unvaccinated riders starts Monday in National Capital Region

THE Department of Transportation (DoTr) said it will enforce a "no vaccination, no ride/no entry" policy across all forms of public transport in the National Capital Region (NCR), with the pilot program to launch on Monday, Jan. 17.

"Para mabigyan ng konting allowance ang mga tao (To give everyone time) to prepare for this... Secretary (Arthur P.) Tugade (ordered the policy to be) fully effective by Monday," Undersecretary Artemio U. Tuazon, Jr. said at an online briefing.

On Jan. 11, Mr. Tugade issued Department Order No. 2022-001, limiting public transportation access to vaccinated individuals in the NCR under Alert Level 3 conditions or higher.

"It will be piloted in the National Capital Region where the vaccination rate is already very high," Mr. Tuazon said.

The policy applies to all domestic travel to, from, and within the NCR via public transportation by land, sea, and air, according to the order. It also covers public

Pacquiao: No legal basis for impeding mobility of vaccine-hesitant persons

SENATOR Emmanuel D. Pacquiao, Sr., a candidate for President, said on Wednesday that he opposes restrictions on the mobility of the unvaccinated, calling the decision to be inoculated a "personal choice."

Mr. Pacquiao said authorities should instead persuade the unvaccinated by explaining the benefits of getting shots, instead of using compulsion.

"Let us not treat them like criminals. Let us not deny them their right

to work and buy their necessities," Mr. Pacquiao said in a statement in Filipino.

He urged the Department of Interior and Local Government, the Philippine National Police, the Department of Transportation, and local government units not to implement such restrictions if mandatory safety protocols are observed.

Mr. Pacquiao noted the need to respect those who remain unvac-

inated out of personal or religious belief, adding that no law compels vaccination.

"There is no basis in any law that stops unvaccinated individuals from (moving freely) in the community," he said. "Those who want to get vaccinated should go get vaccinated, but for those who don't want to, let us give them the right to stand up for their beliefs." — **Alyssa Nicole O. Tan**

"Any violation of this DO by operators of public transportation shall be considered a violation of applicable general safety and health provisions under any concession or service agreements, authority or permit to operate, or other similar instruments," the DoTr also noted. — **Arjay L. Balinbin**

transportation for individuals who reside outside the NCR "but work and/or travel to the same."

Passengers must show physical or digital copies of their vaccine cards issued by their local government units or the Department of Health, as well as valid government-issued IDs with picture and address.

"In general, a person is considered fully vaccinated two weeks after their second dose in a two-dose series, such as the Pfizer or Moderna vaccines; or two weeks after a single-dose vaccine, such as the Johnson & Johnson's Janssen vaccine," the DoTr said.

Agriculture damage due to Typhoon Odette hits P12.7B

DAMAGE to the agriculture industry caused by Typhoon Odette (international name: Rai) has risen to P12.7 billion, according to the Department of Agriculture (DA).

The storm affected 396,585 farmers and fishermen across 443,419 hectares of agricultural land, the DA said, with the lost

volume of production estimated at 267,809 metric tons (MT).

The fisheries sector sustained damage valued at P4 billion, with 41,181 fishermen affected.

Losses to the rice crop came in at P2.6 billion on volume of 139,399 MT across 114,777 hectares of farmland.

The high-value crop sector, including banana and cacao, tallied P1.6 billion in damage, coconut P1.5 billion and sugarcane P1.2 billion.

Damaged production areas were mainly in the Calabarzon (Cavite, Laguna, Batangas, Rizal, Quezon), Mimaropa (Mindoro,

Marinduque, Romblon, Palawan), Bicol, Western Visayas, Central Visayas, Eastern Visayas, Zamboanga Peninsula, Northern Mindanao, Davao, Soccsargen (South Cotabato, Cotabato, Sultan Kudarat, Sarangani, and General Santos City), and Caraga regions. — **Luisa Maria Jacinta C. Jocsos**

OPINION

A closer look at recent amendments to the CREATE IRR

THE new year seems like a good time to leaf through recent developments in legislation, simply as a prudent exercise in picking up from where we left off due to the long holidays. Worth noting are the latest amendments to the Implementing Rules and Regulations (IRR) of RA 11534 (or CREATE Law). On Dec. 2, the Department of Finance (DoF) and Department of Trade and Industry (DTI) issued the following amendments:

TAXWISE OR OTHERWISE DOROTHY JANE PUGUON

Availability period — First, the IRR prescribed a maximum period for availing of non-income-related tax incentives. These incentives refer to the exemption from customs duty on importations of capital equipment, raw materials, spare parts or accessories; the VAT exemption on imports; and the VAT zero-rating on local purchases. Thus, registered export enterprises may avail of these incentives for a maximum of 17 years, while registered domestic market enterprises are eligible for customs duty exemption for a maximum of 12 years. The period is counted from the date of registration, unless otherwise extended under the Strategic Investment Priority Plan.

Sunset period — A sunset period was also imposed on the non-income-related tax incentives of existing registered business enterprises (RBEs) under their respective registrations. Export enterprises registered with ecozones and freeports are to enjoy the

incentives until the sunset period ends. If the existing RBE is entitled only to an income tax holiday (ITH), then the sunset period will run until the expiration of the ITH. However, if the existing RBE was granted the 5% gross income

tax rate, whether solely or after the expiration of the ITH, the sunset period is set for 10 years from the effectivity date of CREATE. On the other hand, existing RBEs registered with the Board of Investments (BoI) are eligible for duty exemption for five years from the date of registration.

Zero rating — Rule 2 Section 5 on VAT Zero-Rating and Exemption was further amended to delete the clause relating to the 12% VAT on indirect exports (i.e., transactions falling under Section 106(A)(2)(a) (3), (4), and (5), and Section 108(B) (1) and (5) of the Tax Code, as amended). The enumeration of goods and services that qualify as for the "direct and exclusive use for the registered project or activity" was expanded to include packaging materials, provision of basic infrastructure, utilities and maintenance, repair and overhaul of equipment. Finally, the grant of VAT zero-rating on local purchases requires the endorsement of the concerned Investment Promotion Agency (IPA), as well as meeting the documentary requirements of the Bureau of Internal Revenue (BIR).

ITH — The three-year income tax holiday that may be granted to qualified

expansion projects or activities shall be followed by the Special Corporate Income Tax (SCIT) or enhanced deductions, as may be applicable. Non-income-related tax incentives may also be given.

Duty exemption — Existing RBEs qualify for duty exemption until the expiry of the Certificate of Authority to Import or Admission Entry for imports which were ordered, loaded, or are still in transit during the effectivity of Executive Order 85, series of 2019. Executive Order 85 provided for duty-free imports of certain capital equipment, spare parts and accessories by BoI-registered enterprises with new or expansion projects.

Offshore gaming — An additional section lays down the transitory rules for offshore gaming licensees and accredited service providers registered with IPAs before CREATE took effect. They may continue to enjoy the incentives until the expiry of the sunset period or of their license/registration, whichever comes first.

Notably, some amendments were highly anticipated by stakeholders, such as the deletion of the clause relating to 12% VAT on indirect exports, and the expansion of the list of goods and services classified as for "direct and exclusive use." While not intended to be exclusive, the expanded list provides additional guidance on what purchases qualify for VAT zero-rating.

However, some IRR amendments may not be in harmony with CREATE, particularly, the availability and sunset

periods for non-income-related tax incentives.

These periods are not found under the law. Sections 296 and 311 of CREATE, which provide the availment and sunset periods, respectively, speak only of ITH, SCIT (or the 5% gross income tax under special laws), and enhanced deductions. Since the law was silent as to any period applicable to non-income-related tax incentives, RBEs should be entitled to such incentives for the duration of their registration. For existing RBEs, it means that they should continue to enjoy the non-income-related tax incentives granted under their existing registrations and not repealed by CREATE.

It is also worth noting that, even before the amendment, Rule 2 Section 5 on VAT Zero-Rating and Exemption was inconsistent with CREATE. Following the definition of the terms under CREATE and its IRR, RBEs are classified as either export enterprises or domestic market enterprises. Section 295(D) of CREATE provides that RBEs are entitled to the VAT incentives, yet the IRR restricted these incentives to registered export enterprises only. Sadly, this interpretation was retained under the amended IRR.

Undoubtedly, the validity of the rule-making power of administrative agencies or "subordinate legislation" is well-recognized under our legal system. Administrative agencies may promulgate rules and regulations to implement laws enacted by the Legislative Branch. No less than the Supreme Court has de-

clared that these rules and regulations have the force and effect of law. However, delegated legislative authority does not come unbridled. Equally recognized is the principle that IRRs should not modify, expand, or restrict the statute they seek to implement. To be a valid exercise of the rule-making power, IRRs must not contradict but should conform to the provisions of the law.

With due respect, the limitations imposed on the period within which non-income-related tax incentives may be enjoyed and the distinction created between export and domestic market enterprises on the eligibility for the VAT incentives amount to an undue expansion of the law.

Time and again, the Supreme Court has struck down provisions of IRRs that conflict with the law they are supposed to implement. The *raison d'état* lies in the old legal maxim that *the spring cannot rise higher than its source*. Thus, there may be a need to revisit the amended IRR.

The views or opinions expressed in this article are solely those of the author and do not necessarily represent those of Isla Lipana & Co. The content is for general information purposes only, and should not be used as a substitute for specific advice.

DOROTHY JANE PUGUON is an assistant manager at the Tax Services Department of Isla Lipana & Co., the Philippine member firm of the PwC network.
dorothy.jane.puguon@pwc.com

