

BDB Law

DU-BALADAD AND ASSOCIATES

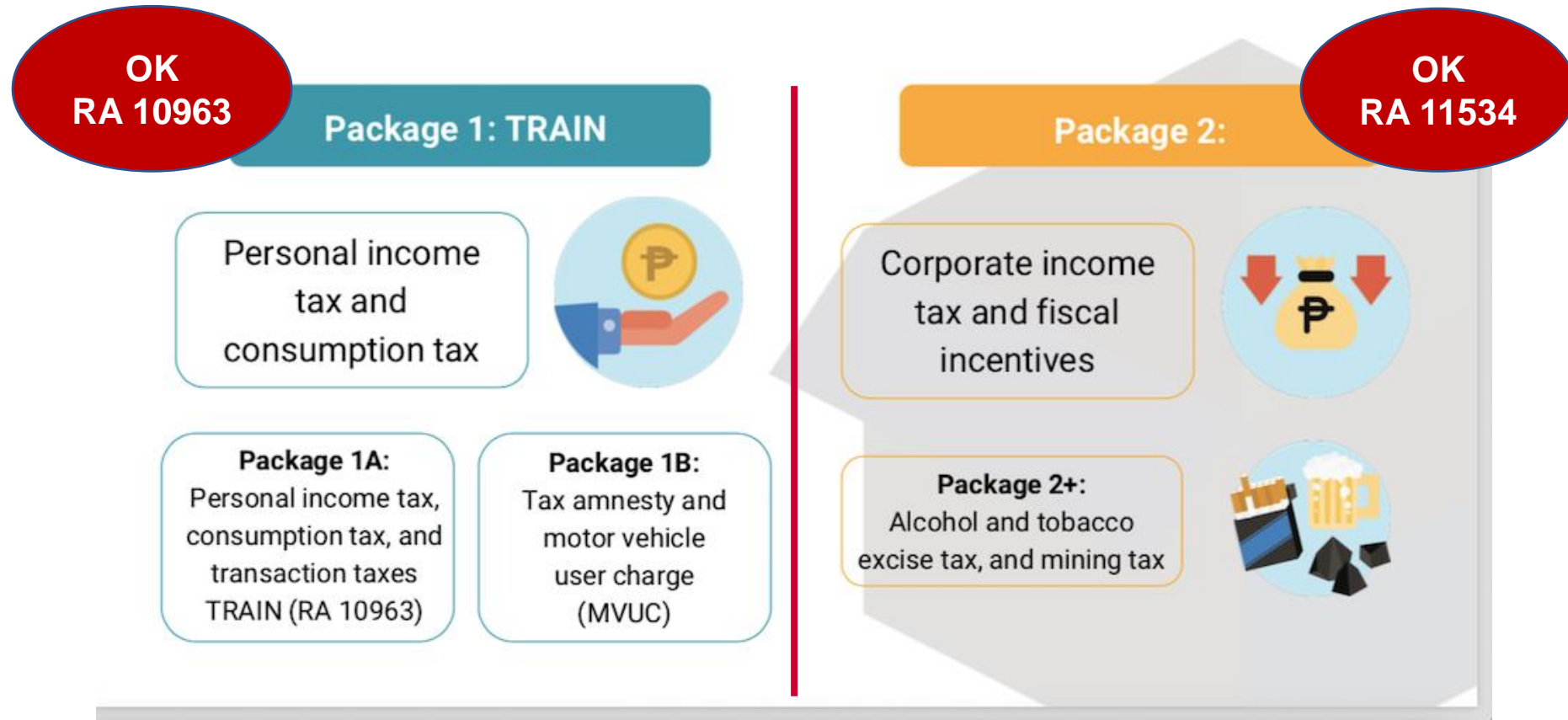
Holistic. Professional. Personal.

wts global

CREATE – RA 11534

(Corporate Recovery and Tax Incentives for Enterprises)

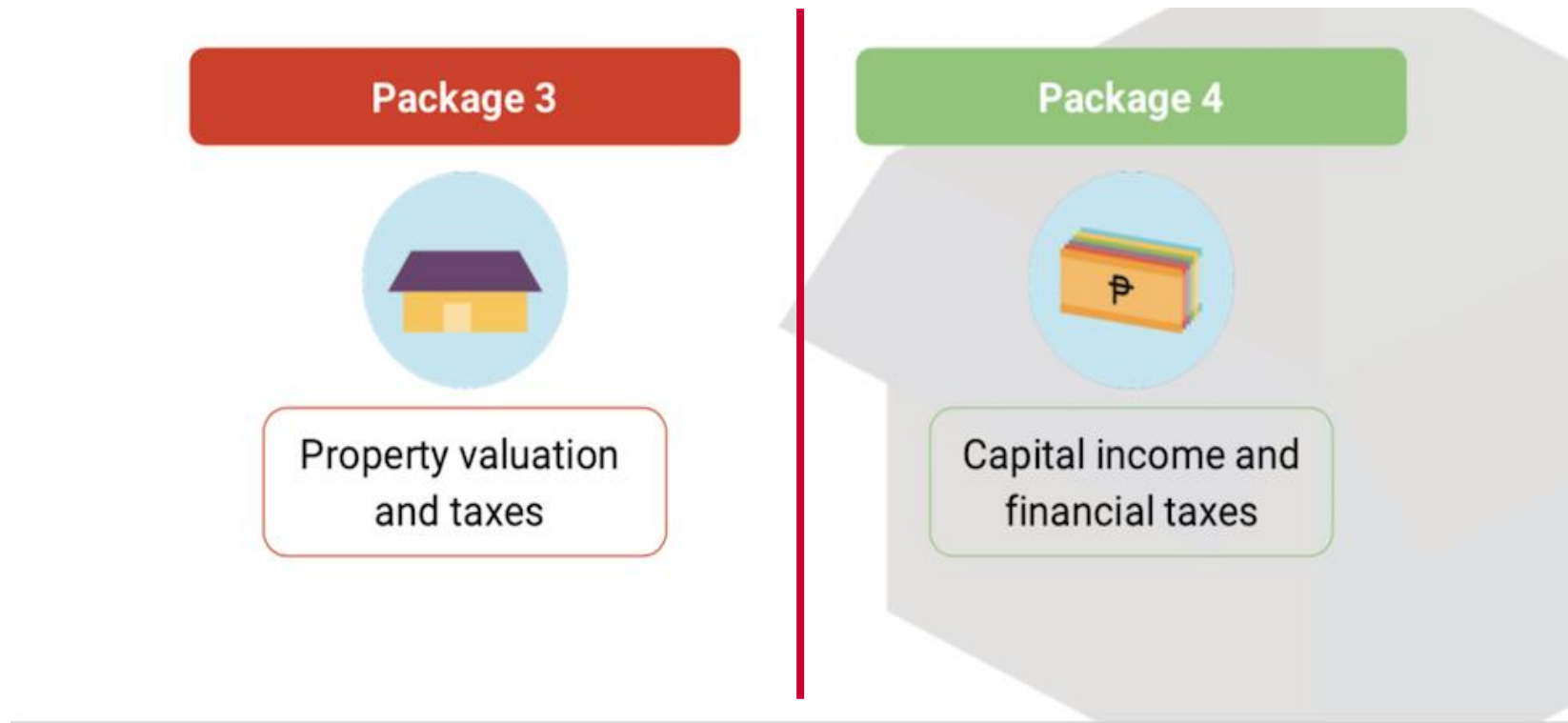
THE COMPREHENSIVE TAX REFORM



EMPLOYEE/SELF-EMPLOYED

EMPLOYERS/CORPORATES

THE COMPREHENSIVE TAX REFORM



TAX RATE AMENDMENTS

Coverage	Pre-CREATE	CREATE	Effectivity
Domestic Corporations <ul style="list-style-type: none"> In General MSME (Taxable income of P5M and below + Total assets of not more than P100M) 	30%	<ul style="list-style-type: none"> 25% 20% 	July 1, 2020
Foreign Corporations	30%	25%	Effectivity: <ul style="list-style-type: none"> RFC – July 1, 2020 NRFC – January 1, 2021
Proprietary Educational Institutions and Hospitals	10%	1%	From July 1, 2020 to June 30, 2023 (Temporary Covid Relief Measure)

TAX RATE AMENDMENTS

Coverage	Pre-CREATE	CREATE	Effectivity
MCIT	2%	1% - DC 1% - RFC	From July 1, 2020 to June 30, 2023 (Temporary Covid Relief Measure)
IAET	10%	REPEALED	Upon effectivity of RA 11534
Resident Foreign Corp CGT from Unlisted Shares Interest income from EFCDU	5%-10% 7 ½ %	15% 15%	Upon effectivity of RA 11534
ROHQ	10%	RCIT	Effective January 1, 2022
Percentage Tax	3%	1%	From July 1, 2020 to June 30, 2023 (Temporary Covid Relief Measure)

TAX RATE AMENDMENTS

Coverage	Pre-CREATE	CREATE	Effectivity
VAT on the sale or importation: <ul style="list-style-type: none"> Capital equipment and raw materials for PPE production Prescription drugs, medical supplies, and equipment for Covid-19 Vaccines for Covid-19 	12%	EXEMPT	From January 1, 2021 to December 31, 2023 (Temporary Covid Relief Measure)
VAT on the sale or importation: <ul style="list-style-type: none"> Books Prescription drugs and medicines for cancer, mental illness, tuberculosis, kidney diseases 	12%	EXEMPT	<ul style="list-style-type: none"> Upon effectivity of RA11584 January 1, 2021

Changes on Income Tax

Definition of “Corporation”

BEFORE

Includes:



Partnerships

Joint-stock companies

Joint accounts

Associations

Insurance Companies

AMENDMENTS

Includes:



One person corporations

Partnerships

Joint-stock companies

Joint accounts

Associations

Insurance Companies

Tax Rates Imposed on Domestic and Resident Foreign Corporations

BEFORE

Single-Tiered Rate

30% Income tax rate imposed

AMENDMENTS

TWO-Tiered Rate

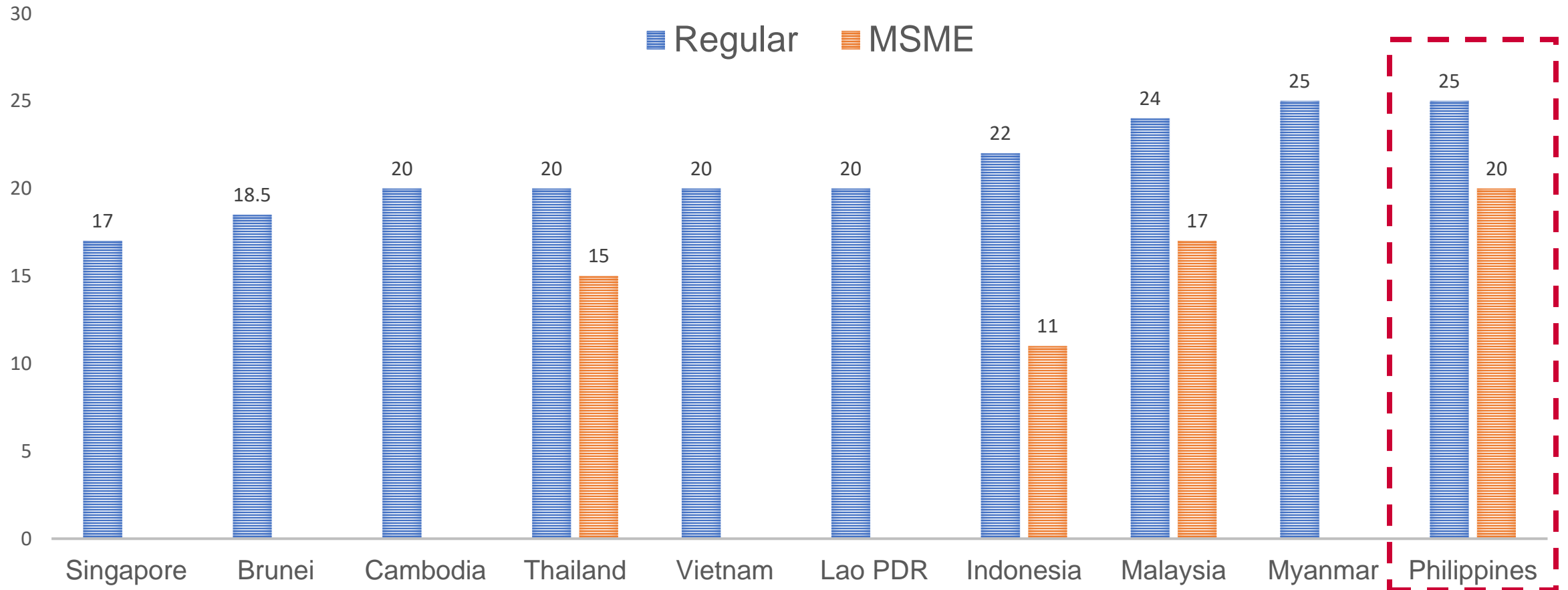
25% GENERAL RULE

20% MSME RATE

**EFFECTIVE
JULY 1, 2020**

- **Net taxable income** not exceeding P5,000,000, **AND**
- Total assets not exceeding P100,000,000
 - Excludes land on which office, plant or equipment is situated during the YEAR

Corporate Income Tax Rates in ASEAN (2021)



Preferential Tax Imposed on Proprietary Educational Institutions and Hospitals

BEFORE

10% Preferential income tax rate:

Only proprietary educational institutions defined

AMENDMENTS

10% Preferential income tax rate:

1%

**From July 1, 2020 to
June 30, 2023**

TEMPORARY COVID RELIEF MEASURE

Proprietary educational institutions **and hospitals** - a PRIVATE hospital or private school with permit from DEPED, CHED or TESDA

Exemption of GOCCs

BEFORE

GOCCs exempt from income tax:

- GSIS
- SSS
- PHIC
- Local water districts

AMENDMENTS

GOCCs exempt from income tax:

- GSIS
- SSS
- **HDMF**
- PHIC
- Local water districts

Minimum Corporate Income Tax (DC and RFC)

BEFORE

2% MCIT rate

AMENDMENTS

MCIT rate:

2% General

1%

**From July 1, 2020 to
June 30, 2023**

TEMPORARY COVID RELIEF MEASURE

Tax Rates Imposed on Improperly Accumulated Earnings (IAET)

BEFORE

10% Income tax rate imposed

AMENDMENTS

IAET Repealed

Tax on Intercorporate Dividends

BEFORE



Intercorporate dividends **between domestic corporations** are exempt

Foreign-sourced dividends – subject to tax at the corporate tax rate of 30%

AMENDMENTS



Intercorporate dividends between domestic corporations are exempt

Foreign sourced dividends **exempt if:**

- Actually remitted or received into the Phils and reinvested in PH operations of the corporation
- W/in next taxable year from receipt of dividend
- Limited to funding of working capital, capex, dividend payments, investments in domestic subsidiaries, and infra project;
- Recipient DC directly owns at least 20% of FC for a minimum of 2 years at the time of div. distribution

Tax Rates Imposed on Foreign Corporations (RFC and NRFC)

BEFORE

30% Income tax rate imposed

5%-10% Tax on capital gains from shares not traded in stock exchange

AMENDMENTS

25% **EFFECTIVE July 1,2020 - RFC**
Jan. 1,2021 - NRFC

15% Tax on capital gains from shares not traded in stock exchange

Tax Rates Imposed on Certain Resident Foreign Corporations

BEFORE

OBUs - Exemption or preferential final tax rates of OBUs, interest income from FX loans, and income from another OBU/FCDU

10% Income tax rate on ROHQs

7 1/2% Interest income from FCDUs

AMENDMENTS

RCIT Exemption/special tax regime for OBUs removed

RCIT Income tax rate on ROHQs

15% Interest income from FCDUs

**EFFECTIVE
JAN
1, 2022**

Deduction to Gross Income

BEFORE

N/A

No provision for deduction of labor training expenses

AMENDMENTS

Additional deduction of one-half (1/2) of the value of labor training expenses incurred for skills development of enterprise-based trainees enrolled in public senior high schools, public higher education, public technical and vocational institutions:

Requirements:

1. Covered by apprenticeship agreement
2. Secure certification from DepEd, TESDA or CHED
3. Not to exceed ten percent (10%) of direct labor wage

Interest Arbitrage Section 31(B)(1)

BEFORE

33% Reduction of interest expense based on amount of interest income

AMENDMENTS

20% Reduction of interest expense based on amount of interest income



Additional provision on adjustment or reduction rate based on a prescribed standard formula to be defined in the rules and regulations

Tax Free Exchange Section 40(C)(2)

BEFORE

Non-recognition of gain or loss pursuant to a merger or consolidation by the following parties or such merger or consolidation:

- A corporation
- A shareholder
- A security holder of a corporation

AMENDMENTS

Non-recognition of gain or loss on a **corporation, or on its stock, or securities in a REORGANIZATION OR EXCHANGES OF PROPERTIES** by the following:

- A corporation who is a party to the merger or consolidation
- **A corporation acquiring the stock of another corporation resulting in control**
- **A corporation acquiring all of the properties of another corporation**
- **Recapitalization**
- **Reincorporation**

Tax Free Exchange Section 40(C)(2)

BEFORE

No gain or loss shall also be recognized if property is transferred to a corporation by a person in exchange for stock or unit of participation in such a corporation of which as a result of such exchange said person, alone or together with others, not exceeding four (4) persons, gains control of said corporation: xxx

AMENDMENTS

No gain or loss shall also be recognized if property is transferred to a corporation by a person, **alone or together with others, not exceeding four (4) persons** in exchange for stock or unit of participation in such a corporation of which as a result of such exchange the **transferor or transferors, collectively**, gains **or maintains** control of said corporation: xxx

Tax Free Exchange Section 40(C)(2)

BEFORE

AMENDMENTS

Non-imposition of VAT

Prior ruling for availment of tax exemption is not required

Definition of “Control” for Sale or Disposition of Property Section 40(C)(6)

BEFORE

“Control” shall mean ownership of stocks in a corporation possessing at least fifty-one percent (51%) of the total voting power of all classes of stocks entitled to vote.

AMENDMENTS

“Control” shall mean ownership of stocks in a corporation possessing at least fifty-one percent (51%) of the total voting power of all classes of stocks entitled to vote.



Collective and not individual ownership of all classes of stocks entitled to vote shall be used

Power to Review and Amend Rules on CWT

BEFORE

N/A No provision for review and/or amendment of rules on creditable withholding tax

AMENDMENTS



Addition of power of DOF to review rules on creditable withholding tax at least once every three (3) years

Changes on Value-Added Tax

VAT Exempt Transactions - Residential Section 109(P)

BEFORE

Sale of real properties not primarily held for sale or lease:

- Residential lot valued at P1,500,000 and below
- House and Lot, Other residential dwellings at P2,500,000 and below

AMENDMENTS

Sale of real properties not primarily held for sale or lease:

- Residential lot valued at **P2,500,000** and below
- House and Lot, Other residential dwellings at **P4,200,000** and below

The said amounts shall be adjusted to present values beginning January 1, 2024 and every three (3) years thereafter

VETOED

VAT Exempt Transactions - Residential Section 109(P)

VETO Message:

- The VAT exemption is targeted to provide relief to buyers of socialized and base-level economic housing. The CREATE amendment would **benefit even those that could afford proper housing.**
- **Prone to abuse** as properties may be parceled into lots to lower individual values
- Estimated revenue loss: **P155.3 Billion from 2020 to 2030**

VAT Exempt Transactions - Books Section 109(Q)

BEFORE

Sale, importation, printing, or publication of books, newspaper, magazine, review or bulletin

AMENDMENTS

Sale, importation, printing, or publication of books, newspaper, magazine, **journal**, review, bulletin or **any such educational material covered by the UNESCO agreement on the importation of educational, scientific, and cultural materials**

VAT Exempt Transactions – COVID 19 PPE's and Vaccine, Drugs Section 109(BB)

BEFORE

N/A No similar provision

AMENDMENTS

Sale or importation related to Covid-19:

- Capital equipment, spare parts, and raw materials for production of PPEs;
- Drugs, vaccines, and medical services;
- Drugs for treatment of C-19, clinical trials, including raw materials directly necessary for production of such drug

FROM Jan 1, 2021 to Dec 31, 2023

TEMPORARY COVID RELIEF MEASURE

VAT Exempt Transactions – COVID 19 Vaccine

Section 109(BB)

BEFORE

N/A No similar provision

AMENDMENTS

CoVID 19 Vaccine shall be EXEMPT from import duties, taxes and other fees, subject to approval of DOH or FDA

TEMPORARY COVID RELIEF MEASURE

VAT Exempt Transactions – Prescription Drugs Section 109(BB)

BEFORE

Sale of or importation of prescription drugs and medicines for CANCER, MENTAL ILLNESS, TUBERCULOSIS, AND KIDNEY DISEASES –

EXEMPT BEGINNING Jan 1, 2023

AMENDMENTS

Sale of or importation of prescription drugs and medicines for CANCER, MENTAL ILLNESS, TUBERCULOSIS, AND KIDNEY DISEASES –

EXEMPT BEGINNING Jan 1, 2021

Other Percentage Tax Section 116

BEFORE

3% Percentage tax rate

AMENDMENTS

Percentage tax rate:

3% General

1%

**FROM JULY 1, 2020 to
JUNE 30, 2023**

TEMPORARY COVID RELIEF MEASURE

Refund of Erroneously or Illegally Collected Taxes Section 204(C)

BEFORE

Period to process refund of erroneously or illegally collected taxes not provided

CIR not required to state legal and factual basis for denial

Appeal to CTA not provided

AMENDMENTS

CIR required to process refund within 90 days from submission of complete documents

CIR required to state in writing the legal and factual basis for the denial

Appeal to the CTA within thirty (30) days from receipt of decision

VETOED

Refund of Erroneously or Illegally Collected Taxes Section 204(C)

VETO Message:

- Administratively difficult to implement:
 - Requires a full audit of AITR
 - Requires COA examination

Congressional Oversight Committee Section 290

BEFORE

The Committee shall:

- Monitor proper implementation of RA 8240 (Excise taxes on distilled spirits, wines, fermented liquor, cigars and cigarettes)
- Determine reasonable exercise of CIR's power to compromise and abate
- Review BIR collection performance
- Review BIR program implementation

AMENDMENTS

The Committee shall:

- Monitor proper implementation of RA 8240 (Excise taxes on distilled spirits, wines, fermented liquor, cigars and cigarettes)
- Determine reasonable exercise of CIR's power to compromise and abate
- Review BIR collection performance
- Review BIR program implementation
- **Review performance of FIRB**

VETOED TAX AMENDMENT PROVISIONS

Coverage	Pre-CREATE	Vetoed in CREATE
VAT exemption threshold for sale of residential properties	<ul style="list-style-type: none"> Residential lot at P1,500,000 and below House and Lot, other dwellings at P2,500,000 and below 	<ul style="list-style-type: none"> Residential lot at P2,500,000 and below House and Lot, other dwellings at P4,200,000 and below
Period to process refund of erroneously or illegally collected taxes	No period provided	CIR required to process refund within 90 days from submission of complete documents

Effectivity Date

CREATE shall take effect within **fifteen (15) days** after its complete publication in the Official Gazette or in a newspaper of general circulation

Financial Institutions Strategic Transfer (FIST) Act (RA 11523)

POWERS OF FISTC

FISTC shall have the power to transact with regard to NPAs and NPLs:

- To invest in, or acquire NPAs of FIs
- Engage third parties to manage, operate, collect and dispose of NPAs acquired from FIs
- Rent, lease, hire, subject to security interest, mortgage, transfer, sell, exchange, usufruct, secure, securitize, collect rents and profits, and other similar acts concerning NPAs acquired from FIs
- In case of NPLs, to restructure debt, condone debt and undertake other restructuring related activities
- Buy or transfer shares issued by the borrower for the purpose of business reorganization or rehabilitation of the borrower

POWERS OF FISTC

FISTC shall have the power to transact with regard to NPAs and NPLs:

- Enter into dation in payment arrangements, foreclose judicially or extrajudicially and other forms of debt settlement involving NPLs
- Spend funds to renovate, improve, complete or alter its NPAs acquired from FIs
- Issue equity or participation certificates or other forms of Investment Unit Instruments (IUI) for the purpose of acquiring, managing, improving and disposing of its NPAs acquired from FIs
- Borrow money and issue other instruments of indebtedness for the purpose of paying operation and administrative costs
- Guarantee credit, and accept, intervene or honor the bills of borrowers

FIST CORPORATIONS



Stock corporation organized in accordance with the RCC



Not allowed to be incorporated as one-person corporation



If the FISTC will acquire land, **at least 60% of its outstanding capital stock** shall be owned by Philippine nationals



Application as FISTC shall be filed with the SEC **within 36 months** from effectivity of the Act



Subject to **minimum capitalization requirements**



FISTC Plan must be submitted to SEC

MINIMUM CAPITALIZATION REQUIREMENTS

₱500 Million	₱125 Million	₱31.25 Million
Minimum authorized capital stock	Minimum subscribed capital stock	Minimum paid-up capital

PERIOD FOR FILING APPLICATIONS

Application for establishment and registration of a FISTC shall be filed with the SEC **within 36 months** from the effectivity of the Act

INCENTIVES, EXEMPTIONS, and PRIVILEGES

Period of Entitlement

Not more than **two (2) years** from the effectivity of the Act

Not more than **five (5) years** from the date of acquisition
(For transfer from FISTC to third parties, the FISTCs must have acquired the NPA from an FI within the two (2)-year transfer period)

Transfer of **NPA**s

- From FIs to FISTC
- Dation in payment by the borrower/third party to an FI

- From FISTC to third party
- Dation in payment by the borrower/third party to a FISTC

Incentives

Exemption from **DST**, **CGT** (for lands/assets treated as capital assets), **CWT** (for lands/assets treated as ordinary assets), and **VAT/GRT**

- In lieu of applicable fees:
- 50% - registration/transfer fees or real estate mortgage and security to and from FISTC
 - 50% of filing fees for any foreclosure initiated by a FISTC in relation to an NPA from an FI
 - 50% - land registration fees

INCENTIVES, EXEMPTIONS, and PRIVILEGES

The incentives, exemptions, and privileges given to FIs and FISTCs shall be extended to **individuals**, provided:

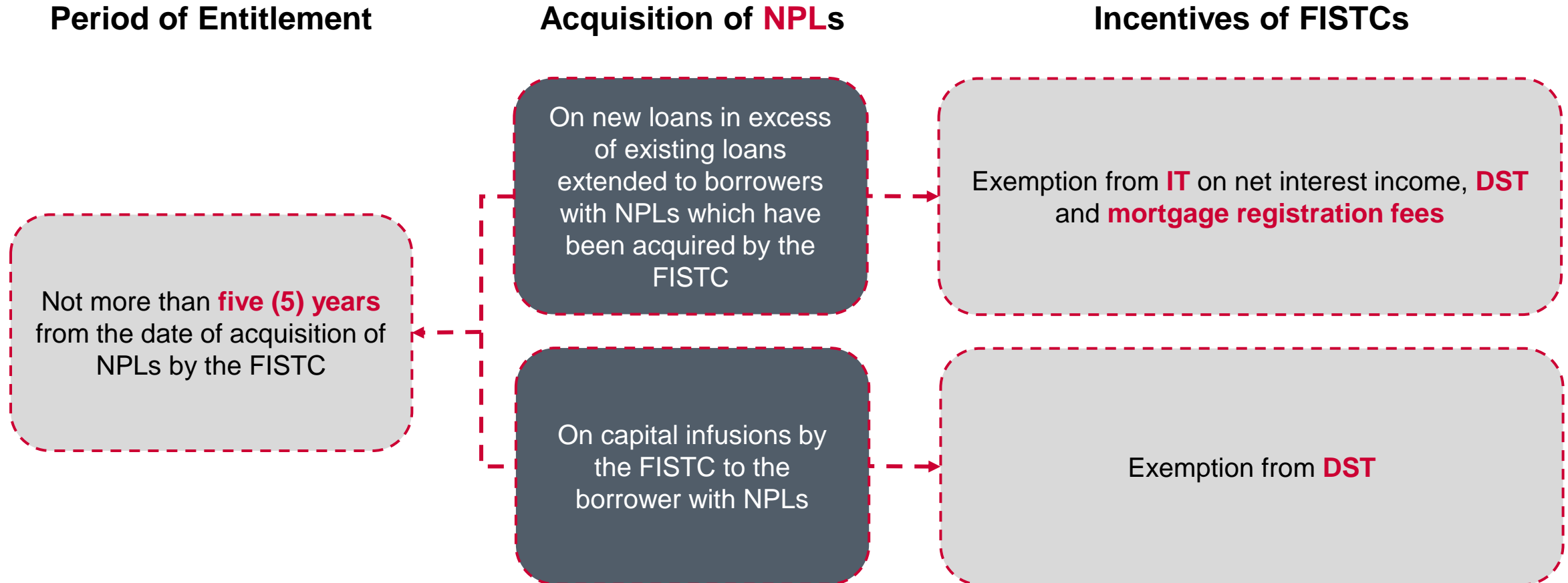
Transaction is limited to:

- 1) ROPA that is a single family residential unit or an empty lot; or
- 2) NPL secured by a real estate mortgage

Only one (1) transaction consisting of one (1) residential unit or empty lot per individual

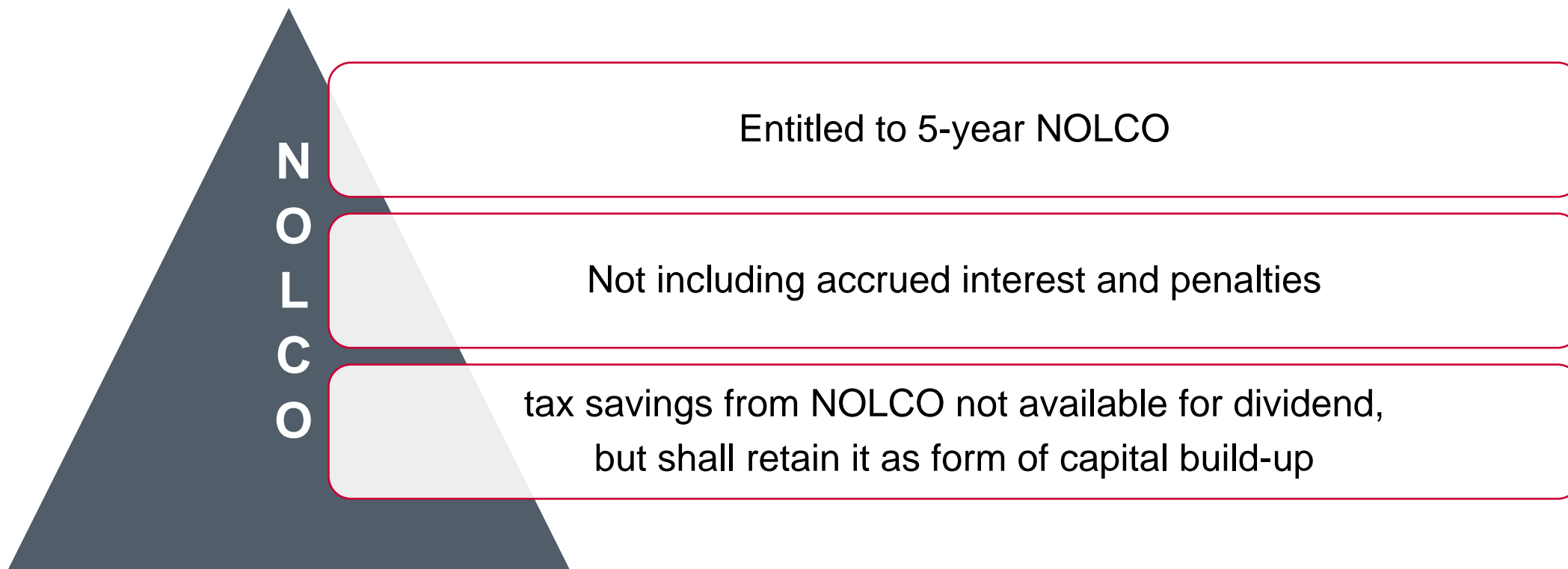
The two (2)-year transfer period, including its extension, and the five (5)-year entitlement period shall also apply to the single family residential unit or empty lot

INCENTIVES, EXEMPTIONS, and PRIVILEGES



NET OPERATING LOSS CARRY-OVER (NOLCO)

Loss incurred by an FI as a result of the transfer of NPA within the two (2)-year period from effectivity of the Act shall:



PENALTIES AND SANCTIONS, IN GENERAL



**Sanctions may be imposed upon the corporation and/or its officer*

PENALTIES FOR ABUSE OF EXEMPTIONS AND PRIVILEGES

Any person, natural or juridical, who benefits from the tax exemptions and privileges granted, when such person is not entitled thereto, shall be subjected to the following:

Fine of not less than ₱100,000.00 nor more than ₱2,000,000.00 or **imprisonment** of not less than six (6) years nor more than twelve (12) years, or both

AND

Refund double the amount of tax exemptions,
plus annual interest of twelve percent (12%)

Effectivity Date

FIST shall take effect **immediately** upon its publication in the Official Gazette and in a newspaper of general circulation

*Date uploaded in the website of the Official Gazette: **February 17, 2021***

*Date of publication: **February 17, 2021***

TAX • LEGAL • CONSULTING

Holistic. Professional. Personal.



20th Floor, Chatham House
Rufino corner Valero Street
Makati City 1227, Philippines



+63 2 403 2001 ext. 300



info@bdblaw.com.ph



www.bdblaw.com.ph

THANK YOU