26 June 2024

Hon. Sherwin Gatchalian
Chairperson
Committee on Ways and Means
Senate of the Philippines
Pasay City

SUBJECT: GPCCI Position Paper on the CREATE MORE Bill

Dear Senator Gatchalian:

We write to express the official position of the German-Philippine Chamber of Commerce and Industry Inc. (GPCCI) on the proposed bills under the Corporate Recovery and Tax Incentives for Enterprises Maximize Opportunities for Reinvigorating the Economy (CREATE MORE) initiative. These bills aim to improve and clarify the country's tax system. GPCCI remains dedicated to supporting German-Philippine businesses in enhancing their performance and potential within the Philippines. We are pleased to see the Philippines continue to compete strongly as a destination for investments and business.

While the CREATE Act (RA 11534) has introduced much-needed reforms to the Philippine tax landscape, we acknowledge the need to address concerns regarding the lack of clarity and inconsistency in its implementing rules and regulations (IRR). These issues were highlighted in our most recent AHK World Business Outlook Survey, where German-Philippine businesses cited economic policy conditions, particularly the lack of clear rules and frequent policy changes, as their top business concern.

We also thank the Committee for inviting GPCCI as a resource speaker during the Technical Working Group (TWG) Meeting last 21 June 2024. In this regard, we respectfully submit the following comments and recommendations for your and the Committee's consideration. We believe these suggestions, reflecting the discussions during the TWG, will further refine the bill and make it more responsive to the immediate needs of both existing enterprises and future investors:

- **Establishment of a VAT refund center under the Department of Finance Revenue Operations Group**
    - [SEC. 5] We concur to a certain extent the reassignment of VAT refund system to DOF ROG to streamline the timeliness, efficiency, and predictability of the VAT refund process but we hope that safety measures be put in place to avoid the same situation in the past where officials of the

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one-stop-shop were charged with issuing substantial amounts of spurious and unsubstantiated tax refund/credit certificates.
    - We would also like to propose making the process electronic. Since the TRAIN law only provided "enhanced" with some amendments to the EOPT Law so claimants will not have to submit documents anymore unless they are classified as high risk or if medium risk random sampling which will be through uploading of invoices. The electronic VAT refund process to be included via CREATE MORE will benefit the DOF-ROG and the claimants to streamline the process and make it more efficient.
    - We likewise request that rules on processing of refunds be crafted together with the BIR and Commission on Audit (COA), and agree on basic parameters, to avoid a situation where tax refunds are cancelled/withdrawn/disputed by COA or by the BIR, after the tax refunds/credit certificates are issued by DOF.

- **Introducing a registered business enterprise local tax (RBELT)**
    - [SEC. 10] We disagree with the proposal to impose an inclusive Registered Business Enterprise Local Tax at the rate of two percent (2%) based on gross income for registered business enterprises during the income tax holiday and enhanced deduction period as outlined in Section 295(A) and (B) of this code. This tax will be imposed on top of the local taxes, fees, and charges imposed by the local government unit, except for the real property tax on land owned by developers. Resounding the sentiments of the private sector during the 1st TWG, imposing another local tax may discourage investors in pushing through with their business in the country, and may also affect the competitiveness of the Philippines in comparison to its regional neighbors at least.

- **100% additional deduction for power costs**
    - [SEC.10] We support the 100% additional deduction for power costs. Energy prices have consistently been a top concern for businesses, as highlighted in the Spring 2024 AHK World Business Outlook Survey (please see attached). This enhanced deduction will help address this significant issue, providing much-needed relief to firms struggling with high energy costs.

- **Extending the Net Operating Loss Carryover (NOLCO)**
    - [SEC. 10] We support the proposal that the net operating loss of the registered project or activity during the first three (3) years from the start of commercial operations, which has not been previously offset as a deduction from gross income, may be carried over as a deduction from gross income

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within the next five (5) consecutive taxable years immediately following the last year of the income tax holiday entitlement period of the project.

- **Additional Provisions in Conditions of Availment of Incentives**
  - [SEC. 11, A] We agree with the proposed amendment as it clearly defines the exemption under the 5% SCIT regime, including fees and charges imposed by the local government unit, ensuring that registered export enterprises fully benefit from the intended tax incentives.
  - [SEC. 11, D] We support the proposed amendment on VAT exemption for importation and VAT zero-rating for local purchases of RBEs that are directly attributable to a registered project or activity of a business enterprise. This amendment broadens the range of local purchases eligible for VAT zero-rating, enhancing the overall incentive framework.

- **Exemption of donations of capital equipment, raw materials, spare parts, or accessories by RBEs to government entities from taxes.**
  - [SEC. 11] We support the proposal that donations to the Government of the Philippines or any of its agencies or political subdivisions, including fully-owned government corporations, TESDA, State Universities and Colleges (SUCs), or DepEd and CHED-accredited schools, shall be exempt from import duties and taxes, including donor's tax.

- **Provisions on the Period of Availment of Incentives for Projects or Activities Approved by the Investment Promotion Agencies**
  - [SEC. 13] We find cumbersome proposals on removing the option to reapply for incentives after the transitory period, undermining the CREATE Act's goal to provide stability for investors.
  - This change would make enterprises registered before the CREATE Act less competitive globally and create uncertainty for future expansion projects. Furthermore, this may deviate from the original intention of the aforementioned law which is to give existing registered business enterprises the opportunity to continue enjoying the incentives for another 15 years maximum after the transition period. Deviating from the intention may create uncertainty and even discourage the retention of foreign investment here and may result in foreign investors finishing the transition period and then going somewhere else.
  - Section 13 (lines 27-29) of the substitute bill details that registered export enterprises can no longer avail for reapplication of incentives for the same project or activity. The removal of the incentives after the transitory period will cause the registered enterprises prior to CREATE Act to be less

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competitive against its competitors abroad who may be enjoying similar incentives previously enjoyed by registered enterprises in the Philippines.

- **Amendments on the Prohibition on Registered Activities**
  - [Section 15] We see issues with the proposed amendments to Section 18. Some activities, such as aircraft maintenance, repair, and overhaul (MRO) and logistics, require operations outside the economic zone. The existing CREATE Law provision acknowledges this need and should be retained. Additionally, the CREATE Law includes a safeguard requiring IPA approval for incentives for activities outside the economic zone, providing necessary flexibility for registered enterprises.

- **Allow RBEs located within economic zones or freeports, involved in the IT-BPO and similar sectors, to implement telecommuting programs.**
  - [SEC. 18] Given the IT-BPM and other industries' ability to operate in alternative work setups, enabling a work-from-home arrangement will significantly benefit the economy.

Attached with the GPCCI position paper are the industry-specific comments and recommendations from Lufthansa Technik Philippines (LTP). LTP has been operating in the Philippines for 24 years with 3,500 employees expected by mid-2025, and has invested over USD 240 million in the building of hangars and other facilities.

With all of these in consideration, we hope that the proposed policies improve both the doing business conditions for domestic and foreign firms and the overall economic performance of the Philippines. We hope our recommendations will be considered in further deliberations regarding the bill.

Germany, with a considerable amount of PHP 393.28 billion, has emerged as the top investor in the Philippines for the year of 2023. Through various partnerships and collaborations between the two governments and the private sector, focus areas of investment and growth are in manufacturing and industrial services, energy, construction and infrastructure, information technology-business process management (IT-BPM), innovation and startups, vocational education and training, and labor.

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GPCCI belongs to the international network of German Chambers of Commerce Abroad (AHKs) that is represented by 150 offices in 93 countries. GPCCI is the official representation of German businesses in the Philippines; a bilateral membership organization with around 300 members; and a service provider to companies in their market entry and expansion.

Sincerely,

Ms. Marie Antoniette E. Mariano	**Mr. Christopher Zimmer**
President	Executive Director

Attachments: AHK World Business Outlook Survey Spring 2024
Lufthansa Technik Philippines Comments and Recommendations

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Lufthansa Technik Philippines
Comments and Recommendations on CREATE MORE

LTP proposes the following language for the provisions of the CREATE MORE Substitute Bill dated 18 June 2024.

- **[Sec. 6 - Value-added Tax on Sale of Services and Use or Lease of Properties; item B, sub-item no. 5]**
  (5) Services performed by subcontractors and/or contractors ~~[in processing, converting, or manufacturing goods]~~ for an enterprise whose export sales exceed seventy percent (70%) of total annual production;

  Rationale: This is to align the VAT zero-rating of local purchases of services by export-oriented enterprises with the provision on local purchases of goods [CREATE MORE Proposed Amendments Section 106 (A) (2) (a) (3)].

- **[Sec. 11 – Conditions of Availment; item C]**
  "(C) The duty exemption shall only apply to the importation of capital equipment, raw materials, spare parts, or accessories ~~[directly]~~ ~~[and exclusively used in]~~ ATTRIBUTABLE TO the registered project or activity by registered business: Provided, That the following conditions are complied with:
  "(1) The capital equipment, raw materials, spare parts, or accessories are ~~[directly]~~ ATTRIBUTABLE TO ~~[and reasonably needed and will be used exclusively in and as part of the direct cost of]~~ the registered project or activity of the registered business enterprise, and are not produced or manufactured domestically in sufficient quantity or of comparable quality and at reasonable prices. Prior approval of the Investment Promotion Agency may be secured for the part-time utilization of said capital equipment, raw materials, spare parts, or accessories in a non- registered project or activity to maximize usage thereof: Provided, That the proportionate taxes and duties are paid on a specific capital equipment, raw materials, spare parts, or accessories in proportion
  to the utilization for non-registered projects or activities. In the event...

  Rationale: This is to align the incentives of registered enterprises with those enterprises that are not entitled to incentives.

  In addition, this is to align the incentives as well to the provision stating the expansion of scope of purchases entitled to VAT zero-rating [CREATE MORE Proposed Amendments Section 295 (D)]

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- **[Sec. 11 – Coniditions of Availment; item D]**
  "(D) The VAT exemption on importation and VAT zero-rating on local purchases [shall only apply to] goods and services ~~[directly and exclusively used in]~~ ~~[DIRECTLY]~~ ATTRIBUTABLE TO the registered project or activity ~~[by]~~ OF a registered business enterprise~~[.]~~, WHICH SHALL INCLUDE JANITORIAL SERVICES, SECURITY SERVICES, FINANCIAL SERVICES, CONSULTANCY SERVICES, MARKETING AND PROMOTION, AND SERVICES RENDERED FOR ADMINISTRATIVE OPERATIONS SUCH AS HUMAN RESOURCES, LEGAL, AND ACCOUNTING: PROVIDED, THAT THE PROJECT OR ACTIVITY REGISTERED WITH THE INVESTMENT PROMOTION

  Rationale: This is to align the incentives of registered enterprises with those not entitled to incentives.

- **[Sec. 13 – Period of Availment; item A]**
  "(A) For export enterprise, income tax holiday of four (4) to seven (7) years, depending on location and industry priorities as specified in this Section, and followed by ~~[special corporate income tax rate]~~ SCIT or ~~[enhanced deductions]~~ EDR for ten (10) years~~[.]~~, OR SCIT OR EDR FOR A MAXIMUM PERIOD OF FOURTEEN (14) TO SEVENTEEN (17) YEARS, DEPENDING ON LOCATION AND INDUSTRY PRIORITIES, EXCEPT WHEN GRANTED BY THE FISCAL INCENTIVES REVIEW BOARD UNDER SECTION 296-A OF THIS TITLE: PROVIDED, THAT REAPPLICATION FOR INCENTIVES SHALL NOT BE ALLOWED FOR THE SAME REGISTERED PROJECT OR ACTIVITY.

  "A qualified expansion or entirely new project or activity registered under this Act may qualify to avail of incentives, subject to the qualifications set forth in the Strategic Investment Priority Plan and performance review by the Fiscal Incentives Review Board:[Provided, That existing registered projects or activities prior to the effectivity of this Act may qualify to register and avail of the incentives granted under this Act for the maximum period not exceeding fifteen (15) years [prescribed period], subject to the criteria and conditions set forth in the Strategic Investment Priority Plan;]

  Rationale: The proposed provisions defeat the original intention of CREATE Act to avoid abrupt transition of tax regime and to provide investors ample time to recalibrate its contracts/agreements, especially those with long-term contract, as well as recalibrate its financial impact on the companies' operations. The removal of the incentives after the transitory period will cause the registered enterprises prior to CREATE Act to be less competitive against its competitors abroad who may be enjoying similar incentives previously enjoyed by registered enterprises in the Philippines.

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It creates uncertainty regarding the incentive period of an expansion project of an existing registered enterprise prior to CREATE Act. This may limit a longer availment period of a future expansion project because the incentives of the registered activity prior to CREATE Act are not allowed to be reapplied after the transitory period.

The current provisions of the law have reasonable safeguards for the entitlement to incentives i.e., the reapplication is subject to the approval of FIRB and the registered activity/ies should be included in the SIPP.

- **[Sec. 13 – Period of Availment; item B]**
  "The period of availment of the foregoing incentives shall commence from the actual start of commercial operations with the registered business enterprise availing of the tax incentives within three (3) years from the date of registration, unless otherwise provided in the Strategic Investment Priority Plan and its corresponding guidelines. [: Provided, That after the expiration of the transitory period under Section 311 (C), export enterprises registered prior to the effectivity of this Act shall have the option to reapply and avail of the incentives granted under Section 294(B) for the maximum period not exceeding fifteen (15) years ~~same period provided~~ under this Section, subject to the conditions and qualifications set forth in the Strategic Investment Priority Plan and performance review by the [Fiscal Incentives Review Board]

- **[Sec. 309 Amendment]**
  "SEC. 309. Prohibition on Registered Activities. – EXCEPT AS ALLOWED UNDER THIS PROVISION, [A] a qualified registered project or activity under an Investment Promotion Agency administering an economic zone or freeport shall be exclusively conducted or operated within the geographical boundaries of the zone or freeport being administered by the Investment Promotion Agency in which the project or activity is registered, OR WITHIN THE REGISTERED PLACE OF BUSINESS OF THE QUALIFIED PROJECT OR ACTIVITY FOR THOSE LOCATED OUTSIDE ECONOMIC ZONES OR FREEPORTS: Provided, That a registered business enterprise may conduct or operate more than one qualified registered project or activity within the same zone or freeport under the same Investment Promotion Agency: Provided, further, That any project or activity conducted or performed outside the geographical boundaries of the zone or freeport shall not be entitled to the incentives provided in this Act, unless such project or activity is conducted or operated under another Investment Promotion Agency:

Rationale: While the intention is to confine the operations of registered enterprises within the geographical boundaries of the economic zone, due to the nature of its

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registered activity, companies are constrained to operate outside its economic zone (i.e., aircraft MRO, logistics etc.). The existing provision in the CREATE Law recognizes this constraint in the operations of such registered activity, hence, the said provision is proposed to be retained.

Relatively, there is an existing safeguard in the CREATE Law that subjects to IPA approval such entitlement of registered activity outside the economic zone, to incentives. This will also allow flexibility of registered enterprises to accomplish its registered activities.

Lufthansa Technik Philippines hopes that these comments and recommendations be considered in the deliberation of this bill as it greatly impacts industries in the country.

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