

Republic of the Philippines
HOUSE OF REPRESENTATIVES
QUEZON CITY

First Regular Session
FIFTEENTH CONGRESS

House Bill No. 3162



Introduced by: HON. GLORIA MACAPAGAL ARROYO

EXPLANATORY NOTE

Investments have always been regarded as a major pillar in the development of the national economy. Past administrations have always worked for an economy which fosters an environment conducive for investments. More investments translate to more employment opportunities, and spur economic activities. It is envisioned that investments in identified strategic economic areas such as in Clark, Subic, Cagayan, Zamboanga, Aurora, Bataan will result in greater economic activities and development throughout the country.

To attract investments, the government has continually pursued several strategies such as streamlining of government processes as well as the granting of fiscal and non-fiscal incentives. Fiscal incentives may take the form of tax incentives such as income tax holidays, tax and duty exemptions on imported capital equipment and raw materials, tax credit, exemption from local taxes, among others. These are offered to investors under various incentive laws and in some cases become redundant.

The fiscal costs to government of these incentives in the form of foregone revenue amount to about P47B. This amount could substantially fund basic social services in the form of more school buildings, more hospitals, or more infrastructure facilities like more roads, bridges, ports, among others.

Since these incentives are provided under different laws with differing provisions, there is an urgent need to rationalize and harmonize such incentives. A balance must be formulated between the need to attract investment, thus, offer attractive fiscal incentives on one hand and exercise prudence in granting these incentives.

To address this problem of redundant incentives, there is a need to legislate a law that will rationalize these fiscal incentives.

This proposed legislative measure seeks to: 1) promote exports equally regardless of their location, whether outside or inside economic zones; 2) promote countryside development by granting reduced income tax incentives to investors investing in the 30 poorest provinces; 3) eliminate competition among ecozone administrators on account of unequal tax incentives regimes by eliminating existing redundant tax incentives found in all incentive laws and

replacing them with either a reduced income tax package or a gross income tax package; and, (4) introduce institutional reforms by enhancing capacities and clarifying the mandates and roles of concerned agencies at the same time strengthening the monitoring and reporting processes and mechanisms in the implementation of these incentives.

This measure on rationalization of fiscal incentives has long been under consideration by Congress. There is urgency in passing this measure as it will save billions upon billions of revenue that would otherwise be lost.



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AN ACT RATIONALIZING THE GRANT AND ADMINISTRATION OF
FISCAL AND NON-FISCAL INCENTIVES, AND FOR OTHER PURPOSES

PRELIMINARY TITLE

TITLE AND DECLARATION OF POLICY

SECTION 1. *Title.* - This Act shall be known as "The Consolidated Investments Incentives Code of the Philippines".

SEC. 2. *Declaration of Policies.* - The national economy shall be developed to enhance its competitiveness in the global economy and encourage investments that promote countrywide development, generate employment and foreign exchange. Accordingly, the following are declared policies of the State:

(1) The state shall ensure that investment incentives shall promote substantial social and economic spillovers, equitable development across income classes and cross provinces, are fiscally sustainable, financially and economically justifiable, and are consistent with international treaties. The State shall therefore provide the means for ascertaining that these objectives are being attained.

(2) The State shall grant the necessary investment incentives that encourage long-term and recurrent investment, simple to administer, time-bound and whose performance and outcomes are easily verifiable.

(3) The State shall devote resources towards monitoring enterprises benefiting from incentives, and shall vigorously prosecute abuses. The State shall also closely monitor the level of tax expenditures arising from the provision of incentives and shall ensure that concerned government agencies are well-informed of these developments.

(4) In the granting of fiscal incentives, the State will make efforts to ascertain that the incentives are not redundant: that the investments they benefit require and truly motivated by the incentives, as much as possible, are not given to investors who would have made the investments even the absence of incentives.

TITLE

DEFINITION OF TERMS

SEC.3. *Definition of terms* - As used herein, the following shall mean:

- (a) "Investment Promotion Agencies (IPAs) " shall include the Philippine Economic Zone Authority (PEZA), Bases Conversion and Development Authority (BCDA), Subic Bay Metropolitan Authority (SBMA), Clark Development Corporation (CDC), John Hay Management Corporation (JHMC), Poro Point Management Corporation (PPMC), Bataan Technology Park Inc. (BTPI), Cagayan Economic Zone Authority (CEZA), Zamboanga City Special Economic Zone Authority (ZCSEZA), PHIVIDEC Industrial Authority (PIA), and Aurora Special Economic Zone Authority (ASEZA) and such other economic zones created by law.
- (b) "Registered enterprise" is any individual, partnership, corporation, Philippine Branch of a foreign corporation or other entity incorporated and/or organized and existing under Philippine laws and registered with any of the IPAs: *Provided, however,* That the term "registered enterprise" in an economic zone shall not include any of the following services such as, but not limited to, those engaged in customs brokerage, trucking/forwarding services, parcel services, janitorial services, security services, insurance and/or banking and other financial services, consumers cooperatives, credit unions, consultancy services, restaurants or such other services, within the economic zones, as may be determined by the IPA Board, duly accredited and/or licensed by any of the IPAs and whose income derived within the economic zones shall be subject to taxes under the National Internal Revenue Code of 1977 as amended.
- (c) "Gross income earned" is the gross sales or gross revenues derived by the registered enterprise from its registered business activity net of sales discounts, sales returns and allowances minus cost of sales or direct costs but before any deductions for administrative, marketing, selling, operating expenses or incidental losses during a given taxable year.
- (d) "Export sales" is the sales values and/or revenues paid for in freely convertible foreign currency, determined from invoices, bills of landing, inward letters of credit, landing certificates, or other commercial documents, by a registered enterprises of its (1) products shipped out of the country and sold in the territory of another country or (2) services rendered to clients abroad such as but not limited to information technology (IT) activities, application and/or installation of technology and systems in the project sites, including but not limited to the fields of engineering and construction design and other similar activities which may be approved by the IPA Board, excluding mere deployment of people or individual practice of profession abroad; or (3) logistics, repair and maintenance, and other similar services rendered to international airlines/shipping lines/military aircraft or sea craft even if rendered locally.

- (e) "Tax refund" is any refund against taxes and/or duties equal to those actually paid by a registered export enterprise and to be released by DOF as provided for under Section 8 of this Act.
- (f) "Information Technology Activities" are activities which involve the use of any IT software and/or system for value addition, IT, being collective term for various technologies involved in processing and transmitting information which include computing, multimedia, telecommunications, microelectronics and their interdependencies, including the convergence of various information-based, broadcast and mass media communication technologies.
- (g) "Export Enterprise" is a registered which is a manufacturer, processor or service provider and whose export sale of its products or services is at least seventy percent (70%) of its output.
- (h) "Domestic Enterprise" is a registered enterprise whose export is less than seventy percent (70%) of its output, and is located in the thirty (30) poorest provinces as determined by the Department of Finance (DOF): Provided, that such domestic enterprise has a minimum investment of five hundred million pesos (500,000,000) or can provide a minimum employment of two hundred (200) jobs: *Provided further*, that existing enterprises already located in the thirty (30) poorest as determined by the Department of Finance (DOF) before the effectivity of this Act and have satisfied the minimum investment of five hundred million pesos (500,000,000) or can provide a minimum employment of two hundred (200) jobs are qualified to register and avail of the incentives provided in this Act.
- (i) "Capital Equipment" refers to machinery, spare parts, tools and dies, or those required for pollution abatement and control, cleaner production and water reduction.
- (j) "Source documents" are input materials and documents reasonably needed by IT and IT-enabled industries such as, but not limited to, books, directories, magazines, newspapers, brochures, pamphlets, medical records/files, legal records/files, instruction materials, drawings/blueprints/outlines.
- (k) "Processing" is converting raw materials into marketable form through physical, mechanical, chemical, electrical, biochemical, biological or other means, or by a special treatment or a series of actions, such as slaughtering, milling, pasteurizing, drying or desiccating, quick freezing, that results in change in the nature or state of the products. Mere packing or packaging shall not constitute processing.
- (l) "Industrial Estate (IE)" refers to a tract of land subdivided and developed according to a comprehensive plan under a unified continuous management and with provisions for basic infrastructure and utilities, with without pre-built standard factory buildings and community facilities for the use of a community of industries.

- (m) "Export Processing Zone (EPZ)" refers to a specialized industrial estate and predominantly oriented to export production.
- (n) "Special Economic Zones (SEZ)" hereinafter referred to as ecozones, are selected areas with highly developed or which have the potential to be developed into agro-industrial, industrial, information technology, tourist/recreational centers. An ecozone may contain any or all of the following: industrial estates (IEs), export processing zones (EPZs), IT parks and centers, and tourism estates.
- (o) "Tourism Estate" is a tract of land with defined boundaries, suitable for development into an integrated resort complex, with prescribed carrying capacities, of tourist facilities, and activities, such as, but not limited to, sport and recreation centers, accommodations, convention and cultural facilities, food and beverage outlets, commercial establishments and other special interest and attraction activities/establishments, and provided with roads, water supply facilities, power distribution facilities, drainage and sewage system. And other necessary infrastructures and facilities. A tourism estate shall be under unified and continuous management, and can either be a component of an ecozone or the whole ecozone itself.
- (p) "Freeport" is an isolated and policed area adjacent to a port of entry as defined by defined by Section 3519 of the Tariff and Customs Code, which shall be operated and managed as a separate customs territory to ensure free flow or movement of goods, except those expressly prohibited by law, within, into and exported out in the Freeport zone where imported goods may be unloaded for immediate transshipment or stored, repacked, sorted, mixed, or otherwise manipulated without being subject to import duties. However, movement of these imported goods from the free-trade area to a non-free-trade in the country shall be subject to import duties and taxes.

TITLE II

ADMINISTRATION OF FISCAL AND NON-FISCAL INCENTIVES

SEC.4. *Role of Department of Finance (DOF)* - The DOF shall be the primary agency in charge of formulating the tax and non-tax incentives policies in the country. In doing so, it shall consult the National Economic and Development Authority (NEDA), Department of Trade and Industry (DTI), Department of Budget and Management (DBM), in so far as these incentives policies impact on the country's economic development plan, the investment strategies and national government expenditure program.

The DOF shall be consulted on the implications on the fiscal program of project applications which are to be granted tax incentives by the respective IPAs.

The DOF shall monitor the implementation of tax and non-tax incentives to registered enterprises by the different IPAs. Said IPA shall prepare and submit quarterly reports of the tax and non-tax incentives granted and other relevant data, and submit the same to the DOF, in accordance with Section 17 of this Act.

Over the medium-term, the DOF, in consultation with NEDA, DTI and DBM, shall evaluate the adoption of a tax expenditure budget for fiscal incentives, and when deemed necessary and advantageous to the government, shall propose this as part of the annual General Appropriations Act.

SEC.5. *Role of the Board of Investments.* - The Board of Investment (BOI), created under Executive Order No. 226 is hereby restructured to be the primary agency in charge of investment promotions in the country. It shall be charged with the following functions:

- 1) developing of an investment promotion strategy for the Philippines;
- 2) building effective partnership towards investment promotion;
- 3) targeting, anticipating and generating investment opportunities;
- 4) identifying effective marketing approaches; and
- 5) servicing investment clients' needs.

The functions of the BOI under EO 226 in so far as registration of enterprise and administration of fiscal and non-fiscal incentives thereto are hereby transferred to the PEZA. The function of the BOI under EO 226 pertaining to the formulation of the investment priorities plan is hereby abolished.

SEC.6 *Role of PEZA and other IPAs.* - The PEZA and all other IPAs shall implement investment laws in accordance with their respective charters except the provisions therein on investment incentives which shall be replaced by the investment incentives provided under this Act. Such incentives shall be applicable prospectively to registered investors of these IPAs from the effective Act.

The PEZA, notwithstanding the provisions of Republic Act 7916, as amended, shall have the additional mandate of registering and administering investment incentives to enterprises outside of the economic zones and free ports that may qualify for tax and non-tax incentives under this Act.

TITLE III FISCAL AND NON-FISCAL INCENTIVES TO REGISTERED EXPORT AND DOMESTIC ENTERPRISES

SEC.7. *Incentives to registered Export Enterprises.* - The PEZA and other IPAs may administer the following tax incentives to their respective registered export enterprise:

- (a) **Income Tax Holiday** - An income tax holiday may be granted for three (3) years following the effectivity of this Act to a newly-registered export enterprise: *Provided*, that the ITH shall be granted in a decelerating manner as indicated in the following schedule until its complete phase-out after three (3) years:

- 1) Three (3)- year ITH for export enterprises registering on the 1st year of effectivity of the Act;
- 2) Two (2)-year ITH for export enterprises registering on the 2nd year of effectivity of the Act; and
- 3) One (1)- year ITH for export enterprises registering on the 3rd year of effectivity of the Act.

Provided, further, that the period of ITH, the registered export enterprise may apply for either the reduced income tax incentives package or the gross income-based incentives packaged upon evaluation and approval by the concerned IPA.

- (b) Reduced Income Tax Incentive Package. - The following tax incentives package may be applied for by the registered export enterprise/s and administered by the concerned IPAs: *Provided,* That for this purpose, the export enterprise may either be a newly-registered enterprise under this Act or a previously-registered enterprise with any of the IPAs whose incentives under the charter of its respective IPA had lapsed prior to the effectivity of this Act but which is expanding its export operations through investment in accordance with rules and regulations of the respective IPAs: *Provided, however,* That in the case of a previously-registered and expanding enterprise, the incentive shall apply on the expansion investment only.

- 1) Imposition of a preferential tax rate of twenty-five (25%) of taxable income as defined under Section 31 of the National Internal Revenue Code of 1977, as amended.

- 2) Double Deduction for Training - Expenses for training given to employees by the registered export enterprise for the development of skills, identified and approved as necessary by the appropriate government agency/ies, shall be deductible from gross income tax purposes to the extent of 200% on the year the said training expenses were incurred.

- 3) Double Deduction for Research and Development - Expenses incurred for research and development relating to the business activity of the registered export enterprise, identified approved as such by the appropriate government agency/ies shall be deductible from gross income for income tax purposes to the extent of 200% on the year the said research and development expenses were incurred.

- 4) Net Operating Loss Carryover (NOLCO)- The net operating loss of the registered export enterprise during the first five (5) years from start of commercial operation which had not been previously offset as deduction from gross income shall be carried over as a deduction from gross income for the next five (5) years immediately following the year of such loss: *Provided, however,* That the operating resulting from availment of incentives provided under this Act shall not entitled to NOLCO: *Provided, finally,* That after the availment of NOLCO of registered export enterprises under this provision, the pertinent provisions under the National Internal revenue Code of 1997, as amended, shall apply.

5) Accelerated Depreciation. - accelerated depreciation of plant, machinery, and equipment that are reasonably needed and actually used for the production and transport of goods and services may be depreciated using a rate not exceeding twice the rate which would have been used had the annual allowance been computed in accordance with the rules and regulations prescribed by the Secretary of Finance and the provision of the National Internal Revenue Code of 1997, as amended.

- (c) Gross Income Tax Package.- Instead of the above Reduced Income Tax Package, the registered export enterprise/s may choose and apply with the concerned IPA for the five percent (5%) tax of the gross income earned in lieu of all national and local taxes, except real property tax on land. Once the registered export enterprise/s has/have made the choice, such choice shall be irrevocable for the duration of its registration.

The five percent (5%) tax on gross income earned by registered export enterprises shall be paid, allocated and remitted in accordance with existing provision of laws.

For the purpose of availing of this incentive, the registered export enterprise may either be a newly-registered enterprise under this Act or a previously-registered enterprise with any of the IPAs whose incentive under the charter of its respective IPA had lapsed prior to the effectivity of this Act but which is expanding its export operations through additional investment in accordance with rules and regulations of the respective IPAs: Provided, however, That in the case of a previously-registered and expanding enterprise, the incentive shall apply on the expansion investment only.

- (d) Exemption from Wharfage Dues.- The provision of law to the contrary notwithstanding, exports by registered export enterprise/s shall be exempted from wharfage dues.

- (e) Employment of Foreign Nationals - Subject to the provisions of Section 29 of Commonwealth Act. No. 613, as amended, a registered export enterprise may employ foreign nationals in supervisory, technical or advisory positions for a period not exceeding five (5) years from its registration, extendible for limited periods at the discretion of the Board; Provided, however, That when the majority of the capital stock of a registered enterprise is owned by foreign investors, the position of president, treasurer and general manager of their equivalents may be retained by foreign nationals beyond the period set forth within

Foreign nationals under employment contract within the purview of this incentive, their spouses and unmarried children under twenty-one (21) years of age, who are not excluded by Section 29 of Commonwealth Act. No. 613, as amended, shall be permitted to enter and reside in the Philippines during the period of employment of such foreign nationals.

A registered export enterprise shall train Filipinos as understudies of foreign nationals in administrative, supervisory and technical skills and shall submit annual reports on such training to the Board: Provided, that employment of foreign nationals hired by registered export enterprises in

a supervisory, technical or advisory capacity shall not exceed five percent (5%) of its workforce without the express authorization of the Secretary of DOLE.

SEC.8.Value -Added Tax and Customs Duty Treatment of Improved Capital Equipment and Raw Materials by Registered Export enterprises.

(a) Registered export enterprises registered with IPAs and located inside the

ecozones or free ports shall be entitled to exemption from the value-added tax (VAT) and customs duty imposed on their imported capital equipment including consignment thereof, raw materials used in the manufacturing, processing as defined in Section 3 of this Act or production of their export products, and importation of source documents by IT registered enterprises. Provided, That the Vat and duty-free importation thereof shall be used exclusive by the registered export enterprise in its registered export activity. If the imported capital equipment or raw material shall be used by the registered export enterprise other than for its registered export activity, the availment of incentives under this paragraph shall be subject to the rules and regulations to be promulgated by the DOF.

(b) Registered export enterprise registered with PEZA and located outside the ecozones or free ports shall be subject to a Vat and Customs Duty Refund Mechanism as provided in this Act.

In order to facilitate the immediate processing, clearance and release of VAT and customs duty refund as provided in this Act, a Trust Liability Account(TLA) is hereby authorized to be established in the Bureau of Treasury (BTr). All Vat and customs duty payments pertaining to the importation of registered export enterprises of capital equipment, raw materials or source documents in the case of IT export enterprise shall be deposited in TLA for the purpose of funding valid Vat and customs duty refund claims. The claims for VAT and customs duty refunds shall be made by the registered export enterprise to the DOF-ONE STOP SHOP Tax Credit and Duty Drawback Center (DOF-OSS) which, in turn, will process, approve and release the VAT and customs duty refund.

The VAT and customs duty paid on imported capital equipment may be refunded provided that the capital equipment is being used by the registered export enterprise pursuant to its registered activity. The amount of the VAT and customs duty refund on a particular shipment of raw materials shall be equivalent to the proportion of raw materials used in the production of the exported goods to the total raw materials imported multiplied by the amount of VAT and customs duty paid on such importation. No claim for refund shall be allowed on VAT and customs duty paid on raw materials which are not or not longer intended to be used in the registered export activity.

A registered export enterprise shall file a claim for VAT and customs duty refund within two (2) years after the payment was made. All amounts paid but no longer allowed for refund shall immediately accrue to the general fund of the National Government.

All applications for VAT and customs duty refund shall be processed and acted upon within thirty (30) days after submission of complete documents. The refund shall be in a form of cash or managers/cashiers check payable to the registered export enterprise.

Incase of dispute under the VAT and customs duty refund mechanism provided in this section, the pertinent provision of the National Internal Revenue Code of 1997, as amended, and the Tariff and Customs Code of the Philippines, as amended, shall apply.

SEC.9. Tax Incentive to Registered Domestic Enterprises.

- (a) Imposition of a preferential tax rate of twenty-five (25%) of taxable income as defined under Section 31 of National Internal Revenue Code of 1997, as amended.
- (b) Double Deduction for Training - Expenses for training given to employees by the registered export enterprise for the development of skills, identified and approved as necessary by the appropriate government agency/ies, shall be deductible from gross income from income tax purpose to the extent of 200% on the year the said training expenses were incurred.
- (c) Double Deduction for Research and Development - Expenses incurred for research and development relating to the registered business activity of the registered export enterprise, identified and approved as such by the appropriate government agency/ies shall be deductible from gross income for income tax purpose to the extent of 200% on the year the said research and development expenses were incurred.
- (d) Net Operating Loss Carryover (NOLCO) - The net operating loss of the registered domestic, enterprise during the first five (5) years from start of commercial operation which had not been previously offset as deduction from gross income shall be carried over as a deduction from gross income for the next five (5) years immediately following the year of such loss: Provided, that after the availment of NOLCO of registered domestic enterprise under this provision, the pertinent provisions under the National Internal Revenue Code of 1997, as amended, shall apply.
- (e) Accelerated Depreciation - Accelerated Depreciation of plant, machinery, and equipment that are reasonably needed and actually used for the production and transport of goods and services may be depreciated using a rate not exceeding twice the rate which would have been used had the annual allowance been computed in accordance with the rules and regulations prescribed by the Secretary of Finance and the provisions of the National Internal Revenue Code of 1997, as amended.

SEC. 10. *Entitlement to Investor's Visa by a Foreign National.* -

(a) A foreign national who invest an amount of at least US\$150,000 either in cash and/or equipment, in a registered enterprise shall be entitled to an Investor's Visa: *Provided*, that:

- 1) He is at least eighteen (18) years of age;
- 2) He has not been convicted of a crime involving moral turpitude;
- 3) He is not afflicted with any loathsome, dangerous or contagious disease;
- 4) He has not been institutionalized for any mental disorder or disability;

Provided, further, That as a holder of the Investor's Visa, an alien shall be entitled to reside in the Philippines while his investment subsists. For this purpose, he should submit an annual report, in the form duly prescribed by the Board for the purpose, to prove that he has maintained his investment in the country. Should said alien withdraw his investments from the Philippines, then the Investor's Visa issued to him shall automatically expire.

(b) Foreign persons receiving dividends, interest and royalties from BOI-registered enterprise subject to reduced income tax rates under existing income tax treaties be entitled to the reduced rates until the expiration of the enterprises' registration certificates with the BOI and after such enterprises registered with PEZA: *Provided*, That a favorable ruling is secured from the BIR for this purpose.

TITLE IV
REGISTRATION OF ENTERPRISES

SEC.11. *Qualification of a Registered Enterprise.* - An applicant export or domestic enterprise must satisfy the qualifications specified under Section 3 (h) and (i), respectively, of this Act, in addition to the conditions for qualification as determined by the concerned IPA and as far as these do not conflict with the provisions of this Act.

Further, if the applicant is engaged or proposes to engage in undertakings or activities other than the registered activities, it shall install an accounting system adequate to identify the investments, revenues, costs, and profits or losses of each registered activity undertaken by the enterprise separately from the aggregate investment, revenues, costs and profits or losses of the whole enterprise, or to establish a separate corporation for each registered activity if the concerned IPA should so require to facilitate proper implementation of this Act.

SEC.12. *Criteria for Evaluation of Application.* - The following criteria shall be employed by the concerned IPA in the evaluation and approval of applications for registration:

- (a) Impact of the activity on the overall economy and fiscal sustainability;
- (b) Overall viability of the activity;
- (c) Extent to which investment incentives are redundant;
- (d) The extent of employment, skills and foreign generation;

- (e) The extent to which technological advances are implied and adapted to local conditions;
- (f) Extent to which the output of the applicant supports national export objectives;
- (g) Extent to which incentives contribute to the reduction of poverty and inequality; and
- (h) The extent to which incentives promote investment that help improve the quality of the environment.

SEC.13. *No Double Registration of Enterprises.* - Export or domestic enterprises shall not be allowed to register their export or domestic business activity in more than one IPA.

SEC.14. *Period of Validity of Incentives.* - The incentives provided in Sec. 7 (b) and (c), and Sec. 9 herein shall be valid for a period of twenty (20) years from the start of commercial operation in the case of a registered export enterprise and ten (10) years from the start of commercial operation in the case of a registered domestic enterprise.

The validity period is non- extendible except in the event that the registered enterprise has suffered operational *force majeure* that has impaired its viability, equivalent for the period thereto and subject to the approval of the respective IPA.

TITLE V BASIC RIGHTS AND GUARANTEES OF REGISTERED ENTERPRISES

SEC.15. *Protection of Investments.*- All investors and registered enterprises are entitled to the basic rights and guarantees provided in the Constitution. Among other rights recognized by the Government of the Philippines are the following:

- (a) Repatriation of Investments.- In the case foreign investments, the right to repatriate the entire proceeds of the liquidation of the investment in the currency in which the investment was originally made and at the exchange rate prevailing at the time of repatriation, subject to the provisions of Section 74 of Republic Act. No.265, as amended. For investments made pursuant to Executive Order No. 32, series of 1986 and its implementing rules and regulations, remittability shall be as provided therein;
- (b) Remittance of Earnings.- In the case of foreign investments, the right to remit earnings from the investment in the currency in which the investment was originally made and at the exchange rate prevailing at the time of remittance, subject to the provisions of Section 74 of Republic Act. No. 265, as amended;
- (c) Foreign Loans and Contracts.- The right to remit at the exchange rate prevailing at the time of remittance such sums as may be necessary to meet the payments of interest and principal on foreign loans and foreign obligations arising from technological assistance contracts, subject to the provisions of Section 74 of Republic Act No. 265, as amended;

- (d) Freedom from Expropriation. - There shall be no expropriation by the government of the property represented by investments or of the property of the enterprise except for public use or in the interest of national welfare or defense and upon payment of just compensation. In such cases, foreign investors or enterprise shall have the right to remit sums received as compensation for the expropriated property in the currency in which the investment was originally made and at the exchange rate at the time of remittance, subject to the provisions of Section 74 of Republic Act. No. 265, as amended; and
- (e) Requisition of the Investment.- There shall be no requisition of the property represented by the investment or of the property of enterprises, except in the event of war or national emergency and only for the duration thereof. Just compensation shall be determined and paid either at the time of requisition or immediately after cessation of the state of war or national emergency. Payments received as compensation for the requisitioned property may be remitted in the currency in which the investment was originally made and at the exchange rate prevailing at the time of remittance, subject to the provisions of section 74 Republic Act. No. 265, as amended.

TITLE VI ADMINISTRATION OF INCENTIVES

SEC. 16. *Duties and Responsibilities of PEZA and the Other IPAs.* - The following are the duties and responsibilities of the PEZA and other IPAs under this Act:

- (a) Adopt uniform and consistent procedures of administering incentives, monitoring the recipients and to coordinate efforts in this regard;
- (b) Adopt and implement systems and procedures affecting trade and customs policies in accordance with the requirements established by the DOF;
- (c) Submit data and information to the DOF as required by Sec. 17 to ascertain consistency of investments policies and incentives, including their implementation as provided in paragraph (a), and to ensure the proper implementation of systems and procedures affecting trade and customs policies as provided in paragraph (b); and
- (d) Perform all others duties and responsibilities as may be required by the President.

SEC.17. *Administration, Implementation and Monitoring of Incentives.*- The PEZA and other IPAs shall be responsible for the administration and implementation of the incentives granted to their respective registered enterprises. They shall submit to the DOF their respective tax expenditures based on the computed cost in terms of revenue foregone on the tax incentives granted to their registered enterprises, and other data related to the grant of investment incentives, on a quarterly basis and to cover all their registered enterprises including those whose incentives are provided by investment incentive laws prior to the effectivity of this Act. For proper monitoring, the DOF shall create a single database of all incentives provided by all IPAs. The DOF shall monitor and review the incentives granted and submit an annual report to the President.

TITLE VII FINAL PROVISIONS

SEC.18. *Suspension and Forfeiture of Incentives of Registered Enterprises, Refund and Penalties.*- When there is probable cause to believe that the registered enterprise has violated its registration terms and conditions, the respective Board of the concerned IPA may suspend its availment of incentives after due notice and hearing. The Board may impose fines and penalties and/or forfeit the incentives granted to the registered enterprise whenever there are violations of the registration terms and conditions by the latter, without prejudice to the cancellation of the registration of said enterprise: Provided, however, That the Board may cancel or abate only the imposition of fines. In case of cancellation of the certificate of registration granted under this Act, the Board may, in appropriate cases, require the refund of incentives availed of and impose corresponding fines and penalties.

Any enterprises which violates any provision of this act, its implementing rules and regulations, the terms and condition of its registration or any lawful directive of the concerned IPA, or in the availment of incentives, including all official reports required to be submitted to the DOF, shall be subject to a fine not to exceed One million pesos (P1,000,000) but without prejudice to the cancellation of its registration: *Provided*, that any willful commission of fraudulent misrepresentation in its application for registration or submission of reports or gross violation of this Act and its implementing rules and regulations, a fine of at least One million pesos (P1,000,000) but not to exceed Ten million pesos (P10,000,000) shall be imposed, in addition to other penalties that may be imposed by the Board.

The IPAs shall prepare a schedule of fines and penalties to be imposed on erring registered enterprises depending on the violation incurred, which may be reduced in exceptional cases. Responsible officers of such enterprises, including duly appointed external consultants-agents who knowingly commit, aid or abet the commission of any of the acts mentioned above, shall be subject to fine of not less than One hundred thousand pesos (P100,000) but not more than Three hundred thousand pesos (P300,000). Government officers and employees who participate directly in the commission of the foregoing acts shall likewise be liable to a fine of not less than One hundred thousand pesos (P100,000) but not more than Three hundred thousand pesos (P300,000), in addition to any criminal and administrative penalties imposable under the Civil Service Law, Revised Penal Code, Republic Act. No. 3019 (Anti-Graft And Corrupt Practices Act), Republic Act. No. 6713 (Code of Conduct And Ethical Standards For Public Officials) and other applicable laws. If the offender is a foreign national, the foregoing acts shall be grounds for his summary deportation in addition to the imposable fines and penalties above.

SEC.19. *Implementing Rules and Regulations (IRR).*- The DOF, in consultation with NEDA, DTI, DBM, BIR, BOC, BOI, PEZA and other IPAs, shall promulgate the implementing rules and regulations (IRR) within two (2) months from the effectivity of this Act.

SEC.20. *Transitory Provisions.*- The incentives already granted to enterprises registered with BOI, PEZA and other IPAs under existing investment laws shall continue to be legally binding in accordance with the terms and

conditions stated in their respective registration contracts. Existing registered with BOI, PEZA and other IPAs may opt to be governed by the provisions of this Act prior to the expiration of their existing contracts and subject to the provisions of this Act. For activities or entities, whether government or private, whose tax and/ or duty exemptions or preferential treatment under special laws are withdrawn or replaced by this Act, the pertinent provision of the National Internal Revenue Code of 1997, as amended; the Tariff and Customs Code, as amended; and the Local Government Code of 1991, shall apply.

In addition, dividends, interest and royalties subject to reduced income tax rates under existing income tax treaties paid by BOI- registered enterprises to foreign persons shall be subject to the reduced rates until the expiration of the enterprises' registration certificates with the BOI and after such enterprises registered with PEZA: *Provided*, That a favorable ruling is secured from the BIR for this purpose.

SEC.21. Revenue Gains or Savings from the Rationalization of Fiscal Incentives. Revenue gains or savings from the implementation of this Act shall be utilized exclusively for the following purpose: fifty percent (50%) for infrastructure and fifty percent (50%) for education purposes.

Such allocations shall be segregated as separate trust funds by the National Treasury and shall be over and above the annual appropriations for similar purposes.

SEC.22 Separability Clause.- If any provision of this Act is declared invalid and unconstitutional, the other provisions which are not affected thereby shall remain in force and effect.

SEC. 23. Repealing Clause - The following laws or provisions of laws are hereby repealed.

- (1) Title IV, (1) and (2); Book III, Chapter II, Articles 61 And 62; Book III, Chapter III, Articles 63, 64, 65, 66 and 67; Book IV, Articles 69 and 70; and, Book VI, Article 78 of Executive Order No. 226, series of 1987 - " The Omnibus Investment Code of 1987",
- (2) Republic Act No. 7888 - "An Act to Amend Section 1, Article 7 (13) of Executive Order No. 226", Otherwise Known as the Omnibus Investment Code of 1987;
- (3) Section 23 and 24 of Republic Act. No. 7916 - "Special Economic Zone Act of 1995",
- (4) Section 4 of Republic Act. No. 8748 - "An Act Amending Republic Act No.7916",
- (5) Section 17 and Section 18 (a), (b), (c), and (f) of Presidential Decree No.66- "Creating the Export Processing Zone Authority and Revising Act. No. 5490",

- (6) 4th Paragraph of Presidential Decree No. 529 - "Granting to Petroleum Exploration Concessionaries under the Petroleum Act of 1949 Exemption from Customs Duty and Compensating Tax Importations of Machinery and Equipment, Spare Parts and Materials Required for Their Exploration Operations",
- (7) Section 8, 9 and 10 of Presidential Decree No. 538 - " Creating Establishing the PHIVIDEC Industrial Authority and Making its Subsidiary Agency of the Philippine Veterans Investment Development Corporation Defining its Powers, Functions and Responsibilities, and Other Purposes",
- (8) Section 36 (f) of PD 705 - "Revised Forestry Code of the Philippines;
- (9) Section 16 (a) ,(b) and (c) and Section 17 (a) ,(b), (c), (d) and (e) of Presidential Decree No. 972, as amended, "Promulgating an Act to Promote an Accelerated Exploration, Development, Exploitation, Development, Exploitation, Production and Utilization of Coal",
- (10) Section 3, amending Section 10 Presidential Decree No. 972, as amended by Presidential Decree No. 1174, - "Amending Presidential Decree No. 972, Otherwise Known as the Coal Development Act of 1976",
- (11) Section 4 (a) and (d) of Presidential Decree No. 1442 - "An Act To Promote the Exploration and Development of Geothermal Resources",
- (12) Section 10 (1), (2), (3), (4), (5) and (6) of Republic Act No. 7156, - "An Act Granting Incentives to Mini-Hydro Electric Power Developers and for Other Purposes",
- (13) Section 16 (a) ,(b), (c), (d) and (e), and Section 17 Republic Act. No. 7844 - "Export Development Act. of 1994",
- (14) Section 83, 90, 91, 92 and 93 of Republic Act. No. 7942 - "Philippine Mining Act of 1995",
- (15) Section 9 of Republic Act. No. 8479 - "Downstream Oil Deregulation Act of 1998",
- (16) Section 3 (a), (b), (c), (d) and (h) of Republic Act. No. 8502, "An Act to Promote the Development of the Jewelry Manufacturing Industry, Providing Incentives Therefor and for Other Purposes",
- (17) Section 35 (b),(c) and of Republic Act No.8550 - "Philippine Fisheries Code of 1998",
- (18) Section of the Republic Act No. 9281 - "An Act to Strengthen

Agriculture and Fisheries Modernization in the Philippines by Extending the Effectivity of Tax Incentive and Its Mandated Support, Amending for the Purpose Section 109 and 112 of Republic Act. No. 8435",

- (19) Section 3 (a), (b) and (d) of Republic Act No. 9290 - "An Act Promoting the Development of the Footwear, Leather Goods and Tannery Industries, Providing Incentives Therefor and for Other Purposes",
- (20) Section 5 of Proclamation No. 216, Series of 1993- "Creating the Poro Point Special Economic Zone Pursuant to Republic Act. No. 7227",
- (21) Section 6 of Proclamation No. 984, series of 1997- " Creating the Morong Special economic Zone Pursuant to Republic Act. No. 7227"
- (22) Section 1 and Section 2 (a) and (b) of Executive Order No. 528, Series of 2006, Amending Executive Order No.313, Series of 2004-Modifying the Rates of Duty on Capital Equipment, Spare Parts and Accessories Imported by BOI-Registered New and Expanding Enterprises",
- (23) Section 4 (e) and (f) of Republic Act No. 7903 - "Creating a Special Economic Zone and Free Port in the City of Zamboanga, Creating For this Purpose the Zamboanga City Special Economic Zone Authority, Appropriating Funds Thereof, and for other Purposes",
- (24) Section 4 (b) and (c) of Republic Act. No. 7922 - "Creating a Special Economic Zone and Free Port in the Municipality of Sta. Ana and the Neighboring Islands in the Municipality of Aparri, Province of Cagayan, Providing Funds Therefor, and for other Purposes",
- (25) Section 12 (b) and (c) of Republic Act. No. 7227 - "Accelerating the Conversion of Military Reservation into Other Productive Uses, Creating the Bases Conversion and Development Authority for this Purpose, Providing Funds Therefor and for other Purposes",
- (26) Section 1 (b) and (c), Sections 2, 3, 4, 5, 6 and 7 of Republic Act No. 9400 "Amending RA 7227 as amended, Otherwise Known as the Bases Conversion and Development Act of 1982, and Other Purposes",
- (27) Section 1 of Executive Order No. 619 - "Creating and Designating Special Economic Zones Pursuant to RA 7916, as Amended by RA 8784, in Relation to RA 7227, as Amended by RA 9400, Inside the Clark Free Port Zone",

- (28) Section 5 (A), (B), (C), (D), (E), (F), (G), (H), (I), (J), (K), (L), (M) and (N) and Section 6 and 9 of Republic Act. No. 9490 - "Establishing the Aurora Special Economic in the Province of Aurora, Creating for the Purpose the Aurora Special Economic Zone Authority, Appropriating Funds Therefor and for Other Purposes",
- (29) Section 8 (c) (1), (2) and (3), and (d), Sections 7 and 8 of Republic Act No. 7103 - "Strengthening the Iron and Steel Industry and Promoting the Philippine Industrialization and for Other Purposes",
- (30) Section 6 (a) and (c) and Section 7 of Republic Act. No. 7471 - "Promoting the Development of Philippine Overseas shipping (Philippine Overseas Shipping Development Act)",
- (31) Chapter II, Section 4 (a), (b) (c) and (d) and Chapter VIII, Section 19 (a), (b) and (c) of RA 9295 - "Promoting the Development of Philippine Domestic Shipping, Shipbuilding, Ship Repair and Ship Breaking, Ordaining Reforms in Government Policies Towards Shipping in the Philippines, and for Other Purposes",

All other laws, acts, decrees, orders and issuances or provisions thereof inconsistently with any of the provision of this Act are hereby repealed or modified accordingly.

SEC.24. *Effectivity.*- This Act shall take effect fifteen (15) days following its publication in a newspaper of general circulation in the Philippines.

Approved,