

Chapter X

FISCAL INCENTIVES

Executive Order (EO) No. 226

To attract foreign and domestic investors into the country, the government usually offers various tax incentives, principally through the Board of Investments (BOI) pursuant to EO 226, as amended, otherwise known as the Omnibus Investments Code of 1987. EO 226 is the overall declaration of government policy on investment initiatives, whether made by foreign or domestic investors. It was enacted on July 17, 1987 with the primary objective of encouraging investments in desirable areas of activities through the adoption of a cohesive and consolidated investments incentives law. It also aims to develop the country's industries by establishing and promoting a competitive investment environment and at the same time discourage monopolies.

One important facet of the law is the provision of incentives, fiscal and non-fiscal³⁶², to preferred areas of investments, pioneer or non-pioneer, export production as well as rehabilitation or expansion of existing operation.

Pioneer enterprises are registered enterprises engaged in the manufacture, processing or production of commodities or raw materials that

³⁶² Non-fiscal incentives, include, among others, employment of foreign nations, simplification of customs procedure, unrestricted use of consigned equipment and multiple entry visa.

are not yet being produced in the Philippines on a commercial scale. In addition, it also involves the use of a design, formula, method, process or system of production or transformation of any element, substance or raw material into another raw material or finished goods which is new and untried in the Philippines. Pioneer enterprises are also engaged in the pursuit of agricultural, forestry and mining activities and/or services and energy sectors.

Non-pioneer enterprises refer to all registered producer enterprises not included in the pioneer enterprise list. Incentives granted to registered enterprises, depending on their category, may include income tax holidays, tax credits on raw materials, supplies and semi-manufactured products, additional deduction from taxable income for labor expense, additional deduction from taxable income for necessary and major infrastructure works, exemption from wharfage dues and export tax, duty, impost and fees, hiring of foreign laborers, simplified custom procedures and other tax incentives.

To encourage investments in desirable areas of activity, EO 226 provides incentives to the following: (a) enterprises registered with the BOI; (b) enterprises locating in less developed areas (LDAs)³⁶³; (c) multinational companies (MNCs) establishing their regional or area headquarters (RHQs) or regional operating headquarters (ROHQs) in the Philippines; (d) MNCs establishing their regional warehouses in the Philippines for purposes of supplying spare parts or manufactured components and raw materials to the Asia-Pacific Region and other foreign markets; and (e) enterprises locating in export processing zones.

Further, EO 226 is a relatively focused and systematic grant of incentives based on an Investments Priorities Plan (IPP)³⁶⁴. The IPP is an annual listing of activities/undertakings considered critical to the attainment of the country's overall economic growth and development.

³⁶³ Refers to the most recent list of the thirty (30) poorest provinces of the Philippines at the time of application, as determined by the National Economic Development Authority (NEDA). The list shall be updated no less oftener than every three (3) years.

³⁶⁴ Memorandum Order (MO) 74 was issued on October 28, 2014 prescribing the 2014-2016 IPP, a three-year plan which will be reviewed annually.

- *Incentives granted to BOI-registered enterprises:*
 1. Tax Exemptions
 - a. Income Tax Holiday (ITH)³⁶⁵
 - b. Exemption from Taxes and Duties on Imported Spare Parts
 - c. Exemption from Wharfage Dues and Export Tax, Duty, Impost and Fees
 - d. Tax Exemption on Breeding Stocks and Genetic Materials
 2. Tax Credits
 - a. Tax Credit on Tax and Duty Portion of Domestic Breeding Stocks and Genetic Materials
 - b. Tax Credit on Raw Materials and Supplies
 3. Additional Deductions from Taxable Income
 - a. Additional Deduction for Labor Expense (ADLE)
- *Incentives to enterprises located in LDAs*
 1. Six (6) Years ITH for Projects Located in a LDA; and
 2. Additional Deduction for Necessary and Major Infrastructure Works
- *Incentives to expatriates working in RHQs or ROHQs of MNCs in the Philippines:*
 1. Withholding Tax of 15% on Compensation Income – Alien executives occupying managerial and technical positions shall be

³⁶⁵ Under the ITH, the income of a promoted activity is exempt from income tax for a given period. The period of exemption is usually associated with the gestation/incubation/learning period of the activity during which it has to make all sorts of adjustments to be commercially viable. The ITH is granted in order to encourage the establishment of undertakings and enterprises considered necessary to the national interest.

- subject for each taxable year upon their gross income received as salaries, wages, annuities, compensations, remunerations and emoluments to a final tax equal to 15% of such gross income. The same tax treatment is applicable to Filipinos employed and occupying the same positions as those aliens employed by multinational companies, regardless of whether or not there is an alien executive occupying the same position. Qualified Filipino employees shall have the option to be taxed at either 15% of gross income or at the regular tax rate on their taxable income in accordance to the NIRC, as amended;
2. Tax and duty free importation of personal and household effects of alien executives as provided for under Section 105 (h) of the Tariff and Customs Code, as amended, and Section 109 (J) of the NIRC. Provided, that the effects arrive in the Philippines within 90 days before or after conversion of the alien executive's admission category to multiple entry; and
 3. Travel tax exemption of alien executives, including their dependents if joining them during their assignment as certified by the BOI.
- *Incentives to RHQs and ROHQs*
1. Exemption from income tax of RHQs established in the Philippines by MNCs and which headquarters do not earn or derive income from the Philippines but act as supervisory, communications and coordinating centers for their affiliates, subsidiaries, or branches in the Asia-Pacific Region and other foreign markets;
 2. Entitlement of ROHQs to a preferential income tax rate of 10% as provided for under the NIRC, as amended by RA 8424. Any income derived from Philippine sources by the ROHQ when remitted to the parent company shall be subject to the tax on branch profit remittances as provided in Section 28 (a)(5) of the NIRC, as amended;
 3. Exemption from value-added tax (VAT) of RHQs established in the Philippines by MNCs. In addition, the sale or lease of goods

and property and the rendition of services to RHQs shall be subject to 0% VAT rate as provided for in the NIRC. ROHQs are subject to a 12% VAT rate as provided under the NIRC;

4. Exemption from all kinds of local taxes, fees or charges imposed by a local government unit except real property tax on land improvements and equipment of RHQs and ROHQs of MNCs;
 5. Tax and duty free importation of equipment and materials for training and conferences which are needed and used solely for their functions as RHQs and ROHQs and which are not locally available subject to the prior approval of the BOI; and
 6. Entitlement of RHQs and ROHQs to the importation of new motor vehicles, subject to the payment of the corresponding taxes and duties.
- *Incentives to enterprises locating in export processing zones*³⁶⁶
1. Foreign merchandise, raw materials, equipment, spare parts, etc. brought into the zone shall not be subject to customs and internal revenue laws and regulations nor to local tax ordinances;
 2. BOI- registered enterprise incentives; and
 3. Exemption from local taxes and licenses except real estate taxes.

RA 7916, as amended by RA 8748

RA 7916 or the Special Economic Zone Act of 1995 (February 24, 1995) provides the framework for the transformation, formation and monitoring of certain designated areas in the country called special economic zones

³⁶⁶ These incentives are in addition to those provided under Presidential Decree (PD) 66 [Creating the Export Processing Zone Authority and Revising RA 5490] and RA 7916.

(ecozones)³⁶⁷ where companies and industries establishing their operations therein are given incentives and privileges.

Enterprises locating or operating within the ecozones shall register with the Philippine Export Zone Authority (PEZA) and are entitled to similar incentives granted as provided for under PD 66 or those provided under Book VI of EO 226. These incentives include:

1. Exemption from the payment of all national and local taxes, except the real property tax on land owned by developers. In lieu thereof, they shall pay a tax equivalent to five percent (5%) of their gross income;
2. Exemption from taxes and duties on imported equipment, raw materials and supplies directly needed for its operations;
3. Additional deduction for training expense;
4. Incentives under the Build-Operate-Transfer (BOT) Law³⁶⁸; and
5. Tax credits for exporters using local materials as inputs shall enjoy the same benefits provided for in the Export Development Act of 1994.

Aside from the establishment of ecozones and providing for incentives to firms operating within said areas pursuant to RA 7916, several other special economic zones were also established under separate laws. Foremost of which is RA 7227 which established the Subic Bay Free Port Zone (under the administration of the Subic Bay Metropolitan Authority) and the Clark Special Economic Zone (under the management of the Clark Development Corporation). Moreover, the creation of several special economic zones in various parts of

³⁶⁷ An ecozone is a selected area with highly developed enterprises or which have the potential to be developed into agro-industrial, industrial, tourist/recreational, commercial, banking, investment, and financial centers.

³⁶⁸ These incentives shall only be available to domestic market, facilities, utilities and tourism enterprises.

the country follow through wherein enterprises located in these special economic zones are also entitled to the same benefits and privileges extended to PEZA-registered firms. These ecozones are located in the City of Zamboanga (pursuant to RA 7903) and in the provinces of Cagayan (pursuant to RA 7922), Aurora (pursuant to RA 9490) and Bataan (pursuant to RA 9728).

RA 7227, as amended by RA 9400

Initially, the enactment of RA 7227 or the Bases Conversion and Development Act provides for the creation of the Subic Special Economic and Freeport Zone (SSEFZ). RA 7227 likewise authorized the President, subject to the concurrence of the local government units directly affected, to create through executive proclamation other SEZs in the areas covered respectively by the Clark military reservation, the Wallace Air Station in San Fernando, La Union, and the Camp John Hay in Baguio. Upon recommendation by the BCDA, the law also authorized the President to create SEZs in the municipalities of Morong, Hermosa, Dinalupihan, Castillejos, and San Marcelino.

Thus, the Clark Special Economic Zone (CSEZ) was created by virtue of EO 80 (April 3, 1993), the John Hay Special Economic Zone (JHSEZ) per Proclamation 420 (July 5, 1994), the Poro Point Special Economic Zone (PPSEZ) per Proclamation 216 (July 27, 1993) and the Bataan Technology Park (Morong Special Economic Zone or MSEZ) through Proclamation 984 (March 26, 1997). Enterprises inside these ecozones are entitled to incentives which include the following:

1. Exemption from national and local taxes. In lieu of these taxes, they shall pay a tax equivalent to 5% of their gross income; and
2. Tax and duty-free importations of raw materials and capital equipment.

However, some entities questioned the constitutionality of the grant of tax privileges to JHSEZ and CSEZ on the ground that only Congress can grant tax exemptions. Hence, the Supreme Court ruled and nullified the grant of tax privileges to said enterprises, to wit:

1. The Supreme Court (GR 119775, October 24, 2003) declared the second sentence of Section 3 of Proclamation 420 granting tax exemption to the JHSEZ similar to those enjoyed by the SSEFZ under RA 7227 null and void for being violative of the Constitution.
2. Resolution of the Court En Banc (March 29, 2005) denied with finality the motion for reconsideration filed by the Office of the Government Corporate Counsel on the Supreme Court's Decision of October 24, 2003 which invalidated the second sentence of Section 3 of Proclamation 420.
3. The Supreme Court (GR 132527, July 29, 2005) declared Section 5 of EO 80 granting tax incentives and duty free privileges to the CSEZ, second sentences of paragraphs 1.2 and 1.3 of EO 97-A governing the tax and duty-free privileges within the Secured Area of the SSEFZ and Section 4 of BCDA Board Resolution 93-05-034 which also pertains to CSEZ as unconstitutional, illegal and void.

To restore the tax and duty privileges of CSEZ, Proclamation 1035 (Creating and Designating Certain Parcels of Land of the Public Domain situated at Angeles City, Municipalities of Mabalacat and Porac, Pampanga and the Municipalities of Capas and Bamban, Tarlac as a Special Economic Zone Pursuant to RA 7916 as Amended by RA 8748, March 10, 2006) designated the area covered by the CSEZ as a special economic zone under RA 7916, as amended, to enable the investors to avail of the PEZA incentives.

An agreement was also made by the Clark Development Corporation and the PEZA for the official transfer of the area covered by the CSEZ as special economic zone pursuant to RA 7916, as amended, effective March 10, 2006.

However, as a result of the Supreme Court's rulings, locators in the affected ecozones were assessed tax and duty liabilities. The rulings also caused uncertainty among locators in similarly-situated ecozones such as the Poro Point and the Bataan Ecozone in Morong. To resolve this problem, RA 9399 (March 20, 2007) granted tax amnesty to all these locators. The tax amnesty in this instance is remedial as its objective was to prevent withdrawal of

investments made by locators on the basis of tax incentives which they initially thought were available to them. The amnesty, however, covers only the past tax and duty liabilities of the locators.

Furthermore, the enactment of RA 9400 (March 20, 2007) ultimately resolved the constitutionality issue on the grant of tax incentives to these ecozones created by RA 7227. RA 9400 categorically grants tax incentives to the CSEZ, SSEFZ, JHSEZ, PPSEZ, and other ecozones to be created under RA 7227. RA 9400 also extends to the PPFZ the same tax privileges available to the Subic and Clark freeports as well as the tax privileges available to enterprises locating in said freeports. RA 9400 also provides for the tax privileges of business enterprises in the MSEZ. These tax privileges are also similar to those granted to enterprises locating in the Subic or Clark Freeport. Additionally, RA 9400 provides that business enterprises in the JHEZ shall be entitled to the tax privileges of RA 7916. For this purpose, these enterprises shall be registered, regulated and supervised by the PEZA.

RA 7903 and 7922

RA 7903 (February 23, 1995) creates the Zamboanga City Special Economic Zone while RA 7922 (February 24, 1995) creates the Cagayan Special Economic Zone and Freeport. Incentives, benefits, and other privileges presently enjoyed by business establishments within SSEFZ shall also be granted to enterprises located in these zones. In addition, these establishments are entitled to incentives under EO 226 or PD 66.

RA 9490, as amended by RA 10083

RA 9490 enacted on June 29, 2007 creates the Aurora Special Economic Zone to be managed and operated by the Aurora Special Economic Zone Authority (ASEZA). Registered enterprises located therein, to the extent of their activity/project, can avail of the following incentives:

1. ITH;
2. Net Operating Loss Carryover (NOLCO);

3. Exemption from the payment of all national and local taxes, except the real property tax on land owned by developers. In lieu thereof, they shall pay a tax equivalent to five percent (5%) of their gross income;
4. Accelerated Depreciation;
5. Exemption from the payment of tariff and duties on the importation of capital equipment, spare parts, tools and dye;
6. Tax and duty free privilege on the importation of source documents by information technology-registered enterprises;
7. Tax credit equivalent to the internal revenue taxes and customs duties paid on the supplies, raw materials and semi-manufactured products;
8. Exemption from all taxes and duties on the importation of breeding stocks and genetic materials;
9. Exemption from wharfage dues; and
10. Deferred Imposition of the Minimum Corporate Income Tax (MCIT)

Enterprises registered with the ASEZA may enjoy the ITH or NOLCO granted by the latter prior to the availment of the five percent (5%) tax on gross income earned. However, fiscal incentives provided under RA 9490 shall be terminated after a cumulative period of twenty (20) years from the date of registration or start of commercial operation, whichever is applicable, except that it could be extended for industries deemed indispensable to national development. The industries exempted from the said provision shall be recommended by the BOI, with the concurrence of the Secretaries of the Departments of Finance and Trade and Industry.

On April 22, 2010, RA 10083, which amends RA 9490, lapsed into law without the signature of former President Gloria Macapagal-Arroyo in accordance with Article VI, Section 27 (1) of the 1987 Philippine

Constitution. Although the new law provides the same tax incentives to registered enterprises located therein³⁶⁹, it renamed and converted the Aurora Special Economic Zone into the Aurora Pacific Economic Zone and Freeport which shall be managed and operated as a separate customs and taxation territory by the Aurora Pacific Economic and Freeport Authority (APECO). The APECO is non-profit in character and shall be exempt from the payment of all taxes, duties, fees, imposts, charges, costs and service fees in any court or administrative proceedings in which it may be a party. RA 10083 also provides for the expansion of the actual size of the economic zone to approximately 12,900 hectares from the previous land area of about 500 hectares only.

RA 9728

RA 9728 (October 23, 2009) provides for the conversion of the existing Bataan Economic Zone located in the Municipality of Mariveles, Province of Bataan into a special economic zone and freeport to be known as the Freeport Area of Bataan (FAB). The FAB shall be managed and operated as a separate customs territory ensuring free flow or movement of goods and capital within, into and out of its territory. It will be under the management of the Authority of the Freeport Area of Bataan (AFAB). It should be noted that the Bataan Economic Zone was previously under the umbrella of the PEZA. Registered enterprises operating within the FAB shall be entitled to the existing pertinent fiscal incentives as provided under RA 7916, as amended by RA 8748 or those provided under EO 226, as amended. The fiscal incentives shall, however, be terminated after a cumulative period of twenty (20) years from the date of registration or start of commercial operation, whichever is applicable, except that it could be extended for industries deemed indispensable to national development.

³⁶⁹ RA 10083 restructured the allocation of the 5% tax on the gross income earned by locators in the ecozone so that 2% will go to the national government, 2% will be remitted to the treasurer's office of the municipality, and 1% will go to the APEZA. Previously, locators were required to remit 3% of their gross income to the national government and 2% will be remitted to the treasurer's office of the municipality.

RA 9593

The enactment of RA 9593 (May 12, 2009) or the Tourism Act of 2009 recognizes the importance of tourism as an indispensable element of the national economy which must be harnessed as an engine of socioeconomic growth and cultural affirmation to generate investment, foreign exchange and employment, and to continue to mold an enhanced sense of national pride for all Filipinos. For this reason, the State shall seek to develop the tourism industry in the country by adopting a sustainable promotion strategy and at the same time the protection of Filipino heritage and culture. The Department of Tourism (DOT) shall be the primary government agency responsible for the promotion and development of tourism as a major socio-economic activity for the benefit of both the private and public sectors.

RA 9593 provides for the creation of three corporate entities attached to the DOT and under the supervision of the Secretary of Tourism for program and policy coordination, namely the: Tourism Promotions Board (TPB), Duty Free Philippines Corporation (DFPC) and Tourism Infrastructure and Enterprise Zone Authority (TIEZA). The TPB shall be responsible for marketing and promoting the Philippines domestically and internationally as a major global tourism destination while the DFPC is authorized to operate the duty- and tax-free merchandising system in the Philippines to augment the service facilities for tourists and to generate foreign exchange and revenue for the government. On the other hand, the TIEZA shall designate, regulate and supervise the Tourism Economic Zones (TEZs) as well as develop, manage and supervise the tourism infrastructure projects in the country. These entities are exempted from the payment of corporate income tax, as provided under the NIRC, as amended.

In addition, the following incentives, at the discretion of the TIEZA board, may be granted to registered tourism enterprises within the TEZs:

1. ITH;
2. Five percent (5%) tax on gross income earned for new enterprises, in lieu of all other national and local taxes, license fees, imposts and assessments, except real estate taxes and such fees as may be imposed by the TIEZA;

3. Capital investment and imported equipment of regular enterprises shall be entitled to an exemption of 100% of all taxes and duties;
4. Importation of transportation vehicles and the accompanying spare parts by new and expanding regular enterprises shall be exempt from custom duties and national taxes;
5. Goods and services
 - a. Importation of goods actually consumed in the course of services actually rendered by or through regular enterprises within a TEZ shall enjoy 100% exemption from all taxes and custom duties, subject to certain conditions;
 - b. Tax credit equivalent to all national internal revenue taxes paid on all locally-sourced goods and services directly or indirectly used by regular enterprises for services actually rendered within a TEZ; and
6. Social responsibility incentives, wherein a registered enterprise shall be entitled to a tax deduction equivalent to a reasonable percentage (not exceeding 50%) of the cost of environmental protection or cultural heritage preservation activities, sustainable livelihood programs for local communities and other similar activities.

Tourism enterprises located outside a TEZ are also granted tax incentives subject to the provisions of the Omnibus Investment Code, Foreign Investment Act, Special Economic Zone Act of 1995, Bases Conversion and Development Act and other applicable laws. The tax incentives provided to tourism enterprises located inside and outside of TEZs shall take effect only for a period of ten (10) years from the effectivity of the law.

Additionally, the exemption privileges of the DFPC include: (a) exemption from duty and tax, including VAT and excise on the importation of merchandise for sale; and (b) exemption from local taxes and fees and income taxation imposed by Local Government Units (LGUs).

Furthermore, RA 9593 also provides that restoration activities undertaken by the Intramuros Administration, National Parks Development Committee and Nayong Filipino Foundation may be entitled to a tax deduction equivalent to the full cost of the restoration activity directly incurred in accordance with the provisions of the NIRC, as amended.

RA 7844

Another major investment related law is RA 7844 or the Export Development Act of 1994 (December 21, 1994). RA 7844 was enacted to promote and evolve export development into a national effort and make locally produced goods internationally competitive and to generate more foreign exchange.

In addition to the existing incentives provided by the BOI per EO 226, the following tax incentives shall likewise be granted to exporters:

1. Tax credit for imported inputs and raw materials primarily used for the production and packaging of export goods, which are not readily available locally, for five (5) years.
2. Tax credit for increase in current year export revenue computed as follows:
 - a. The first 5% increase in annual export revenue over the previous year would mean a credit of 2.5% to be applied on the incremental export revenue converted to pesos at the current rate;
 - b. The next 5% increase would be entitled to a credit of 5.0%;
 - c. The next 5% increase would be entitled to a credit of 7.5%;
 - d. Any increase in excess of 15% would be entitled to a credit of 10%.

Such tax credit is only granted for the year when the performance is achieved. Export revenues used in the calculation of such tax credits shall be subject to verification as prescribed under the implementing rules and regulations.

RA 7718

RA 7718 which was approved on May 5, 1994 is another law which provides investment related incentive. This RA amends certain sections of RA 6957 (BOT Law) and adds an incentive provision whereby projects in excess of P1 billion shall be entitled to the incentives granted per EO 226 upon registration with the BOI. Non-tax incentives include access to a wide array of business prospects nationwide, plus the assurance of each prospect's viability and access to new sources of funding.

EO 93

EO 93 (issued December 17, 1986 and effective March 10, 1987) is another law which governs fiscal incentives in the Philippines. This law generally withdrew the tax and duty privileges of government and private entities. This came to light as part of the government's continuing efforts to rationalize the overall structure of fiscal incentives/privileges on a sustained basis, given the requirements of economic growth.

In lieu of the withdrawn tax and duty exemption of government entities, the grant of tax subsidy was introduced and institutionalized by the said EO. Under this system, an entity is granted tax subsidy, chargeable against the General Appropriations Act (GAA), to be used as payment for its tax and duty obligations. The withdrawal of tax exemptions was deemed essential because of the need to generate more revenues for economic development purposes. In addition, the removal of tax exemptions also served as a safety measure to provide check and balance in promoting fiscal transparency and discipline in the allocation of scarce government resources. This was in line with the government's vision to optimize the use of its scarce resources in a more efficient, effective and economical manner while not undermining the welfare and interest of the public.

The Fiscal Incentives Review Board (FIRB), originally created under the PD 776, implements the tax subsidy provisions for government corporations based on certain guidelines (e.g., function of government corporations and its role in economic development, financial position of said corporation, price impact, etc.). Beneficiaries of tax subsidy are endorsed by the FIRB to the Department of Budget and Management (DBM) which releases the subsidy to the concerned beneficiary while national government agencies source their tax subsidy requirements directly through the DBM.

Pursuant to Section 16 (c), General Provisions of RA 10717 or the 2016 GAA, the tax expenditures subsidy granted by the FIRB shall be given to government-owned and/or-controlled corporations (GOCCs), the Armed Forces of the Philippines Commissary and Exchange Services (AFPCES), the Philippine National Police Service Store System (PNPSSS) and the Procurement Service Exchange Marts or PX Marts in accordance with EO 93, as amended, including those for tax obligations assumed by GOCCs pursuant to a valid agreement.

Section 16 (d) of the 2016 GAA is a new provision which serves as a basis for the grant of tax subsidy through the FIRB on importation by the DOH of vaccines and medical equipment from international cooperating agencies.

Considering that the GAA is enacted on an annual basis and that the policy thrust of the government depends on a number of factors, the coverage of government corporations entitled to tax subsidy may change from year to year.

EO 1037

EO 1037 (July 4, 1985) created the Philippine Retirement Authority (PRA), a corporate body with the primary objective of promoting and developing the Philippines as a leading retirement destination for foreign nationals and overseas Filipinos as well as former Filipino citizens by providing them the best quality of life in the most attractive package. A retiree-participant is entitled to the following incentives:

1. Exemption from customs duties and taxes for one time importation of personal effects, appliances, and household furniture worth US\$7,000.00 which should not be of commercial quantity and must be availed of within 90 days upon issuance of a Special Resident Retiree's Visa;
2. Exemption from payment of travel tax provided the retiree has not stayed in the Philippines for more than one year from the date of his last entry into the country; and
3. Tax-free remittance of pensions and annuities to the Philippines.

PD 538 (As Amended by PD 1491)

PD 538 [Creating and Establishing the PHIVIDEC Industrial Authority (PIA) (August 19, 1974)], as amended, provides for the establishment of strategic areas with appropriate infrastructure facilities that will encourage and facilitate the establishment of industries which in turn will contribute to economic and social growth. The creation of the PIA shall also encourage, promote, and harness the full potential and capabilities of veterans and Armed Forces of the Philippines (AFP) retirees so that they could participate fully in the enhancement of the economic development of the country. PD 538, as amended provides for the following incentives:

1. Exemption from customs duties, internal revenue taxes, local tax ordinances, and wharfage dues of raw materials, supplies, articles, equipment, machinery, spare parts and wares of every description brought after January 1, 1997 through piers or wharves constructed by the importer with his or its private funds; and
2. In addition to tax privileges accorded to enterprises operating in the PHIVIDEC Industrial Areas which are likewise registered with the BOI, all industries or firms operating in the Areas shall be exempt from the payment of local taxes to the barrio, municipality, city or province.

RA 9513

RA 9513 or the Renewable Energy Act of 2008 was enacted on December 11, 2008. It provides the framework of the government to accelerate the exploration and development of renewable energy (RE) resources such as, but not limited to, biomass, solar, wind, hydro, geothermal and ocean energy sources, including hybrid systems. Through the adoption of sustainable energy development strategies, the government aims to achieve energy self-reliance and reduce the country's dependence on fossil fuels and at the same time minimize the country's exposure to price fluctuations in the international markets, the effects of which spiral down to almost all sectors of the economy.

The grant of fiscal and non-fiscal incentives intends to increase the utilization of renewable energy by institutionalizing the development of national and local capabilities in the use of renewable energy systems and promoting its efficient and most-effective commercial application.

RE developers, including hybrid and cogeneration systems as duly certified by the Department of Energy (DOE), in consultation with the BOI, shall be entitled to the following incentives:

1. ITH for seven (7) years; additional investments entitled to ITH not to exceed three (3) times the period of the initial availment;
2. Duty-free importation of RE machinery, equipment and materials within the first ten (10) years upon the issuance of a certification to an RE developer and subject to certain conditions;
3. Special realty tax rates on equipment and machinery not to exceed 1.5% of original cost less accumulated depreciation or net book value;
4. NOLCO for losses during the first three (3) years from start of commercial operation to be carried over as a deduction from gross income for the next seven (7) consecutive taxable years;
5. Corporate Tax Rate – After the ITH, all RE developers shall pay a corporate tax of ten percent (10%) on its taxable income, as

defined in the NIRC, as amended, provided that the savings shall be passed on to end-users in the form of lower power rates;

6. Accelerated Depreciation (AD) – If the RE project fails to receive an ITH before full operation, it may apply for AD through one of two methods: declining balance method or sum-of-the-years' digit method;
7. Zero Percent VAT rate on the following:
 - a. sale of fuel or power generated from RE sources;
 - b. local supply of goods, properties, services needed for the development, construction and installation of plant facilities;
 - c. process of exploring and developing RE sources to its conversion into power, including, but not limited to the services of subcontractors and/or contractors;
8. Income tax exemption of proceeds from sale of carbon emission credits; and
9. Tax credit on domestic capital equipment and services equivalent to 100% of the VAT and customs duties that would have been paid for the importation, valid within the term of the operating contract.

For RE commercialization, all manufacturers, fabricators, and suppliers of locally-produced RE equipment and components duly recognized and accredited by the DOE shall, upon registration with the BOI, be entitled to the following incentives:

1. Tax- and duty-free importation of components, parts and materials subject to certain conditions;
2. Tax credit on domestic capital components, parts and materials equivalent to 100% of the taxes that would have been paid had these been imported ;

3. Income tax holiday for seven (7) years; and
4. Zero percent VAT on all transactions with local suppliers of goods, properties and services.

Farmers engaged in the plantation of biomass resources are also exempted from payment of the VAT on all types of agricultural inputs, equipment and machinery for a period of ten (10) years from the effectivity of RA 9513. In addition, to encourage the adoption of RE technologies, the DOF, in consultation with the DOE, Department of Science and Technology (DOST) and Department of Trade and Industry (DTI), shall provide tax rebates for all or part of the tax paid for the purchase of RE equipment for residential, industrial or community use.

RA 9520

RA 9520 entitled “An Act Amending the Cooperative Code of the Philippines” also known as the Philippine Cooperative Code of 2008 (February 17, 2009) provides for a strengthened and more comprehensive law on the promotion and development of the country’s cooperatives. It amends RA 6938 or the Cooperative Code of the Philippines Act of 1990. RA 9520 acknowledges the need to foster the creation and growth of cooperatives as a practical vehicle for promoting self-reliance and harnessing people power towards the attainment of economic development and social justice. In addition, it also encourages the private sector to undertake the actual formation and organization of cooperatives and create an atmosphere that is conducive to their growth and development. The law provides for the following incentives:

1. Duly registered cooperatives under the Code which do not transact any business with non-members or the general public shall not be subject to any taxes and fees imposed under internal revenue laws and other tax laws; and
2. Cooperatives transacting business with both members and non-members shall not be subject to tax on their transactions with members. In relation to this, the transactions of members with the cooperative shall not be subject to any taxes and fees, including

but not limited to final taxes on members' deposits and documentary tax. Notwithstanding the provisions of any law or regulations to the contrary, cooperatives dealing with non-members shall enjoy the following tax exemption:

- a. Cooperatives with accumulated reserves and undivided net savings of not more than P10 million shall be exempt from all national, city, provincial, municipal or barangay taxes of whatever name and nature. Such cooperatives shall be exempt from customs duties, advance sales or compensating taxes on their importation of machineries, equipment and spare parts used by them and which are not available locally as certified to by the DTI. All tax free importations shall not be sold nor the beneficial ownership thereof be transferred to any person until after five (5) years. Otherwise, the cooperative and the transferee or assignee shall be solidarily liable to pay twice the amount of the imposed tax and/or duties;
- b. Cooperatives with accumulated reserves and undivided net savings of more than P10 million shall pay the following taxes at the full rate:
 - (i) Income Tax - On the amount allocated for interest on capital: Provided, that the same tax is not consequently imposed on interest individually received by the members. The tax base for all cooperatives liable to income tax shall be the net surplus arising from the business transactions with non-members after deducting the amounts for the statutory reserve funds as provided for in the Cooperative Code and other laws³⁷⁰.
 - (ii) Value-Added Tax – On transactions with non-members, cooperatives duly registered with the CDA are exempt

³⁷⁰ Per Section 8 (b.2.1.1) of the Joint Rules and Regulations Implementing Articles 60, 61 and 144 of RA 9520, Otherwise Known as the Philippine Cooperative Code of 2008 in Relation to RA 8424 or the NIRC, as Amended (February 5, 2010).

from the payment of value-added tax; subject to Section 109, sub-sections L, M and N of RA 9337, the NIRC, as amended: *Provided*, that the exempt transaction under Section 109 (L) shall include sales made by cooperatives duly registered with the CDA organized and operated by its member to undertake the production and processing of raw materials or of goods produced by its members into finished or processed products for sale by the cooperative to its members and non-members: *Provided, further*, that any processed product or its derivative arising from the raw materials produced by its members, sold in their name and for the account of the cooperative shall be deemed a product of the cooperative: *Provided, finally*, That at least twenty-five *per centum* (25%) of the net income of the cooperatives is returned to the members in the form of interest and/or patronage refunds;

- (iii) All other taxes unless otherwise provided herein; and
 - (iv) Donations to charitable, research and educational institutions and reinvestment to socioeconomic projects within the area of operation of the cooperative may be tax deductible.
- c. All cooperatives, regardless of the amount of accumulated reserves and undivided net savings shall be exempt from payment of local taxes and taxes on transactions with banks and insurance companies: *Provided*, that all sales or services rendered for non-members shall be subject to the applicable percentage taxes except sales made by producers, marketing or service cooperatives: *Provided, further*, that nothing in this article shall preclude the examination of the books of accounts or other accounting records of the cooperative by duly authorized internal revenue officers for internal revenue tax purposes only, after previous authorization by the CDA.

RA 10744

RA 10744 accords the Credit Surety Fund (CSF) Cooperatives the same tax privileges as cooperatives registered with the CDA. The law defines CSF as a fund generated from the contributions of well-capitalized and well-managed member-cooperatives/non-governmental organizations (NGOs), - local government units (LGUs), government financial institutions (GFIs) and other institutions/government agencies.

RA 9576

RA 9576 (April 29, 2009) which amends certain provision of RA 3591 or the Philippine Deposit Insurance Corporation (PDIC) Charter, as amended, grants institutional and financial strengthening measures to the PDIC with the intention of further strengthening the mandatory deposit insurance coverage system to generate, preserve, maintain faith and confidence in the country's banking system, and protect it from illegal schemes and machinations.

RA 9576 provides that “all tax obligations of the Corporation for a period of five (5) years reckoned from the date of effectivity of the Act (June 1, 2009), shall be chargeable to the Tax Expenditure Fund (TEF) in the GAA, pursuant to the provisions of EO 93 series of 1986: Provided that, on the sixth year (6th) and thereafter, the Corporation shall be exempt from income tax, final withholding tax, value added tax on assessments collected from member banks, and local taxes”. All notes, debentures, bonds, or such obligations issued by the PDIC are also exempt from taxation both as to principal and interest, and shall be fully guaranteed by the government.

RA 9679

RA 9679 or the Home Development Mutual Fund (HDMF) Law of 2009 intends to strengthen the “Pagtutulungan sa Kinabukasan: Ikaw, Bangko, Industriya at Gobyerno” (Pag-IBIG) Fund by establishing, developing, promoting and integrating a nationwide, sound and viable tax-exempt mutual provident savings system suitable to the needs of the employed and other

earning groups, with mandatory contributory support of their employers in the spirit of social justice and the pursuit of national development. The HDMF Fund, most commonly known as the Pag-IBIG Fund, is a unified endeavor that aims to provide an affordable housing and shelter system to its members.

To attain this, the HDMF Law of 2009 provides that all of its assets and properties, all contributions collected and all accruals thereto and income or investment earnings therefrom, as well as supplies, equipment, papers or documents shall be exempt from any tax, assessment fee, charge or custom or import duty; and all benefit payments made by the Pag-IBIG Fund shall likewise be exempt from all kinds of taxes, fees, or charges, and shall not be liable to attachment, garnishments, levy or seizure by or under any legal or equitable process whatsoever, either before or after receipt by the person or persons entitled thereto, except to pay any debt of the members to the Fund.

RA 9994

RA 9994 or the Expanded Senior Citizens Act of 2010 (February 15, 2010) amends the benefits and privileges of the elderly that were not previously included in RA 7432 or the Senior Citizens Act of 1992. This law further strengthens the goal of the government of promoting a just and dynamic social order that will ensure the prosperity and independence of the nation, free the people from poverty through policies that provide adequate social services, promote full employment and raise the standard of living of the Filipinos. Pursuant to RA 9994, senior citizens are entitled to the following tax and non-tax incentives:

1. 20% discount and exemption from the VAT on the sale of goods and services (medicines; professional and medical and dental fees; transport fares; services in hotels, restaurants and recreation centers; admission fees in theaters and other places of leisure; and funeral and burial services for the death of senior citizens);
2. Exemption from the payment of individual income taxes of senior citizens who are considered to be minimum wage earners in accordance with RA 9504 (An Act Amending Section 22, 24, 34, 35, 51, and 79 of the NIRC, as amended).

Furthermore, the government shall also provide the following assistance:

1. Private entities that will employ senior citizens as employees shall be entitled to an additional deduction from their gross income, equivalent to 15% of the total amount paid as salaries and wages to senior citizens, subject to the provision of Section 34 of the NIRC, as amended, provided, that such employment shall continue for a period of at least six (6) months;
2. At least fifty percent (50%) discount shall be granted on the consumption of electricity, water, and telephone by the senior citizens center and residential care/group homes that are government run or non-stock, non-profit domestic corporation organized and operated primarily for the purpose of promoting the well-being of abandoned, neglected, unattached, or homeless senior citizens, subject to the guidelines formulated by the DSWD; and
3. Realty tax holiday for the first five (5) years starting from the first year of operation to individual or nongovernmental institution caring for or establishing homes, residential communities or retirement villages solely for, senior citizens.

RA 10754

RA 10754 which was enacted on March 23, 2016 entitles the persons with disability (PWDs) to at least twenty percent (20%) discount and exemption from the VAT, if applicable, on the following sale of goods and services for the exclusive use and enjoyment or availment of the PWD (medicines; professional and medical and dental fees; transport fares; services in hotels, restaurants and recreation centers; admission fees in theaters and other places of leisure; and funeral and burial services for the death of PWDs). Further, PWD, who are within the fourth civil degree of consanguinity or affinity to the taxpayer, regardless of age, who are not gainfully employed and chiefly dependent upon the taxpayer, shall be treated as dependents under Section 35 (b) of the NIRC, as amended.

RA 10026

RA 10026 which lapsed into law on March 11, 2010 grants income tax exemption to Local Water Districts (LWD). Said exemption similarly situates LWDs with other GOCCs that are exempt from the payment of income tax per Section 27 of the NIRC, as amended. The amount that would have been paid as income tax and saved by LWDs shall be used for capital development expenditure in order to expand water services coverage and provide safe and clean water in the provinces, cities, and municipalities.

RA 10693

RA 10693 which was enacted on November 3, 2015 provides for a preferential tax rate of two percent (2%) to duly registered and accredited Microfinance nongovernmental organizations (NGOs) on their gross receipts from microfinance operations in lieu of all national taxes. The preferential tax treatment shall be accorded only to NGOs whose primary purpose is microfinance and only on their microfinance operations catering to the poor and low-income individuals in alignment with the main goal of this Act to alleviate poverty. The non-microfinance activities of Microfinance NGOs shall be subject to all applicable regular taxes.

Exemption from Taxes and Duties on Importations Made by Certain Sectors

A number of legislation were enacted during the 15th and 16th Congress (July 2010-March 2016) which grants exemption from payment of taxes and duties on various types of importations. These include RA 9490 (The Civil Aviation Authority Act of 2008), RA10068 (Organic Agriculture Act of 2010), RA 10121 (The Philippine Disaster Risk Reduction and Management Act of 2010), RA 10349 (The New Armed Forces Modernization Act) and RA 10747 (Rare Diseases Act of the Philippines). The exemption from taxes and duties on importation is designed to promote and assist the hasten development and improvement of the aforementioned sectors by being able to bring in additional equipment and resources without incurring additional expenses.

Exemption from Donor's Tax

Several statutes were also passed which exempt certain donations from the payment of donor's tax and treat such donations as allowable deductions from the donor's gross income, primarily intended to encourage donations to beneficiaries thereby enhancing their capability of fulfilling its purpose and objectives. These include RA 10066 (National Cultural Heritage Act of 2009), RA 10072 (The Philippine Red Cross (PRC) Act of 2009), RA 10073 (Girl Scouts of the Philippines Charter of 2009), RA 10165 (The Foster Care Act of 2012), RA 10174 (The Climate Change Act of 2009), RA 10390 [An Act Revitalizing the People's Television Network, Inc. (PTV)] and RA 10650 (Open Distance Learning Act).

Other Fiscal Incentive Legislation

In addition to the foregoing provisions of fiscal incentives, a number of laws have been enacted to provide fiscal incentives to specific sectors or undertakings deemed necessary to promote economic development. These laws cover agrarian reform, labor, cooperatives, sports, mini-hydroelectric power developers, iron and steel industry, mining, housing, banks and other financial institutions, Filipino inventors, disabled persons, senior citizens, exporters, balikbayan, duty free shopping, health, youth, overseas shipping industry, museums, jewelry, education, oil industry, social security, and fisheries, among others.

RA 10708 - Tax Incentives Management and Transparency Act (TIMTA)

In order to establish a mechanism that will effectively account for the foregone revenues through the grant of tax incentives to a number of businesses and activities, RA 10708 was enacted on December 9, 2015. The salient features of the law are as follows:

1. RA 10708 requires all registered business entities to file their tax returns and pay their tax liabilities, on or before the deadline as provided under the NIRC, as amended, using the electronic system for filing and payment of

taxes of the BIR. For registered business entities availing of incentives administered by the Investment Promotion Agencies (IPAs), they shall file with their respective IPAs a complete annual tax incentives report of their income-based tax incentives, value-added tax and duty exemptions, deductions, credits or exclusions from the tax base as provided in the charter of the IPA concerned, within thirty (30) days from the statutory deadline for filing of tax returns and payment of taxes. In turn, the IPAs shall, within sixty (60) days from the end of the statutory deadline for filing of the relevant tax returns, submit to the BIR, their respective annual tax incentives reports based on the list of the registered business entities which have filed said tax incentives report.

2. RA 10708 mandates the BIR and BOC to submit to the DOF: (a) the tax and duty incentives of registered business entities as reflected in their filed tax returns and import entries; and (b) actual tax and duty incentives as evaluated and determined by the BIR and the BOC. The DOF shall maintain a single database for monitoring and analysis of tax incentives granted.

3. Further, the DOF shall submit to the Department of Budget and Management (DBM) the aggregate data on a sectoral and per industry basis of: (a) the amount of tax incentives availed by registered business entities; (b) the estimate claims of tax incentives immediately preceding the current year; (c) the programmed tax incentives for the current year; and (d) the projected tax incentives for the following year. The aforesaid data shall be reflected by the DBM in the annual Budget of Expenditures and Sources of Financing (BESF), which shall be known as the Tax Incentives Information (TII) section.

4. The NEDA is mandated to conduct cost-benefit analysis on the investment incentives to determine the impact of tax incentives on the Philippine economy. For this purpose, all heads of the IPAs shall submit to the NEDA the aggregate tax incentives, based on the submissions of registered business entities and aggregate investment-related data, both on a sectoral or per industry basis, which may include, but not limited to, investment projects, investment cost, actual employment and export earnings.

