Comparative Corporate Income Taxation in ASEAN Member-Countries*

I. INTRODUCTION

The Duterte administration's proposed Comprehensive Tax Reform Program (CTRP) aims to make the Philippine tax system simpler, fairer and more efficient to promote investments, create jobs and reduce poverty. Along with this objective, the CTRP also aims to raise revenues that will fund the country's various infrastructure projects that will sustain high and inclusive growth of the country; and finance investments in our people through enhanced education, health and social services.

Package 1 of the CTRP also known as the Tax Reform for Acceleration and Inclusion (TRAIN) was signed into law as Republic Act (RA) No. 10963 on December 19, 2017. It corrects the longstanding inequity in the tax system, by reducing personal income tax after 20 years of non-adjustment while broadening consumption tax base. In particular, the Act repealed 54 out of 61 special laws with non-essential value-added tax (VAT) exemptions, increased excise tax on petroleum products, coal and automobiles and introduced new taxes such as the sweetened beverage tax and cosmetic surgery tax, among others. The TRAIN law is expected to generate PhP786 billion over five (5) years to fund the President's priority infrastructure and social programs.

Package 2 of the CTRP will lower corporate income tax (CIT) rate and harmonize fiscal incentives. Presently, the Philippines has the highest CIT rate of 30% and an overly generous regime for fiscal incentives which include the income tax holiday as its centerpiece followed by the 5% tax on gross income earned (GIE) which is granted indefinitely in lieu of income, VAT and local taxes.

The proposed reduction of the CIT aims to make the country competitive in the light of the ASEAN economic integration. It should be mentioned that one of the cornerstones of the ASEAN economic integration is to develop a single market within the ASEAN region,

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which to a certain extent requires harmonization of laws, rules and practices, as far as practicable. Ultimately, the integration will lead to what is dubbed as a 'tax rate war' within the region in an attempt to maintain each country's attractiveness as a destination for foreign direct investments.

In view of the ongoing efforts to introduce reforms in corporate taxation, this paper discusses the different features of the Philippine CIT system and how it compares with other ASEAN member states.

II. TAXATION OF CORPORATIONS

A. The Regular Corporate Income Tax

The Philippine CIT is an internal revenue tax levied on the income of companies. It is imposed under Sections 27 and 28 of the National Internal Revenue Code (NIRC) of 1997, as amended. Corporate taxation generally adopts the net income tax system where taxpayers are entitled to claim deductions against their gross income before being subjected to the tax. Under certain laws, however, some corporations such as those operating in special economic zones and those under the Investment Promotion Agencies (IPAs) are taxed on their gross income.

The CIT rate has undergone several changes over time. In 1939, it was set at the rate of 8% of net taxable income (NTI) derived from all sources within and outside the Philippines pursuant to Commonwealth Act (CA) No. 466[1]. The rate was adjusted to 12% in 1946, and to 16% in 1950 until two-tiered rates of 20% and 28% were introduced in 1951 under RA 600[2]. During these years, the rates were uniformly imposed on all types of corporations, whether domestic or foreign. In 1959, RA 2343[3] introduced different tax treatment between corporations, i.e., domestic and resident foreign corporations (DC and RFC) were subjected to two-tiered rates of 22% and 30% depending on the NTI, while non-resident foreign corporations (NRFC) were subjected to a single rate of 30% based on gross income (GI). As observed, the higher rate was imposed on NRFC and the base was changed from NTI to gross income (GI). The CIT rates were later increased to 25% and 35% of NTI for DC and RFC and at 35% of GI for

[1] Entitled, "An Act to Revise, Amend and Codify the Internal Revenue Laws of the Philippines", approved on June 15, 1939.

[2] Entitled, "An Act to Prescribe a Graduated Scale for the Income Tax on Corporations by Amending Section Twenty-Four and Fifty-Four of Commonwealth Act Numbered Four Hundred and Sixty-Six, Otherwise Known as the National Internal Revenue Code, as Amended, and for other Purposes", approved on March 28, 1951.

[3] Entitled, "An Act to Amend Certain Sections of Commonwealth Act Numbered Four Hundred Sixty-Six, Otherwise Known as the National Internal Revenue Code, as Amended, and for Other Purposes", approved on June 20, 1959.

NRFC in 1968 (RA 5431[4]) and were maintained despite the passage of major tax laws [Presidential Decree (PD) Nos. 69[5] and 1158-A[6]] amending the Tax Code in 1972 and 1977.

It was in 1986 when the CIT rate was reverted to a single rate via the issuance of Executive Order (EO) No. 37[7]. The rate was gradually reduced from 35% to 32% under RA 8424[8]. At present, corporations are subject to a 30% CIT rate pursuant to RA 9337[9] which took effect on July 1, 2005. The Act initially set the CIT rate at 35% before reducing it to 30% effective January 1, 2009. The table below summarizes such changes in the tax rates from 1939 up to the present. **(Table 1).**

Under Sections 27(A) and 28 (A)(1) of the NIRC of 1997, as amended, the President, upon the recommendation of the Secretary of Finance, may grant domestic and resident foreign corporations the option to be taxed at 15% of their gross income after the following conditions have been satisfied: (a) tax effort ratio of 20% of gross national product (GNP); (b) A ratio of 40% of income tax collection to total tax revenues; (c) A VAT tax effort of 4% of GNP; and (d) A 0.9% ratio of the consolidated public sector financial position to GNP. In addition, to be able to avail of this option, the firms should have a ratio of cost of sales to gross sales from all sources of not exceeding 55%. Up to the present, these conditions were never met, hence, this option has never been granted since it was introduced via RA 8424 in 1997.

[4] Entitled, "An Act Amending Sections Twenty-Four Twenty-Six, Twenty-Nine, Thirty-Two, Forty-Nine, Fifty-Three, Fifty-Four and Eighty-Four (B) of the National Internal Revenue Code, as Amended (Re-Rates of Tax on Corporations)", approved on June 27, 1968.

[5] Entitled, "Amending Certain Sections of the National Internal Revenue Code", issued on November 24, 1972.

[6] Entitled, "Amending Certain Sections of the National Internal Revenue Code of 1939 for Incorporation in the Consolidation and Codification of all Existing Revenue Laws Under a Presidential Decree No. 1158", issued on June 3, 1977.

[7] Entitled, "Further Amending Certain Provisions of the National Internal Revenue Code, As Amended", approved on July 31, 1986.

[8] Entitled, "An Act Amending the National Internal Revenue Code, As Amended, and for Other Purposes", approved on December 11, 1997.

[9] Entitled, "**An Act Amending Sections 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 and 288 of the National Internal Revenue Code of 1997, As Amended, and For Other Purposes," approved on May 24, 2005.**

Table 1. HISTORICAL CHANGES IN THE CIT RATE IN THE PHILIPPINES

Legal Basis	DC/ RFC		NRFC	
	Tax Base	Tax Rate	Tax Base	Tax Rate
CA 466 (June 15, 1939)	NTI	8%	NTI	8%
RA 82 (October 29, 1946)	NTI	12%	NTI	12%
RA 590 (September 22, 1950)	NTI	16%	NTI	16%
RA 600 (March 28, 1951)	NTI Not over PhP100,000 Over PhP100,000	 20% 28%	NTI Not over PhP100,000 Over PhP100,000	 20% 8%
RA 2343 (June 20, 1959)	NTI Not over PhP100,000 Over PhP100,000	 22% 30%	GI	30%
RA 5431 (June 27, 1968)	NTI Not over PhP100,000 Over PhP100,000	 25% 35%	GI	35%
PD 69 (November 24, 1972)	NTI Not over PhP100,000 Over PhP100,000	 25% 35%	GI	35%
PD 1158-A (June 3, 1977)	NTI Not over PhP100,000 Over PhP100,000	 25% 35%	GI	35%
EO 37 (July 31, 1986)	NTI	35%	GI	35%
RA 8424 (December 11, 1997)	NTI 1998; 1999; and 2000 and onwards	 34% 33% 32%	GI 1998; 1999; and 2000 and onwards	 34% 33% 32%
RA 9337 (May 24, 2005)	NTI July 2005 to 2008; 2009 onwards	35% 30%	GI July 2005 to 2008; 2009 onwards	35% 30%

B. The Minimum Corporate Income Tax (MCIT)

The MCIT on domestic and resident foreign corporations was introduced by virtue of RA 8424, which took effect on January 1, 1998. It came about as a result of the perceived inadequacy of the self-assessment system in capturing the true income of corporations. It is a means to ensure that everyone makes some minimum contribution to support the government. Accordingly, the Congress intended to stop the practice of corporations which, while having large turn-overs, report minimal or negative net income resulting in minimal or zero income taxes year in and year out, through under-declaration of income or over-deduction of expenses otherwise called tax shelters[10].

[10] As discussed in the case of Chamber of Real Estate and Builders Association, Inc., vs The Hon. Executive Secretary Alberto Romulo, et. al, G.R. No. 160756, March 9, 2010 on the constitutionality of the MCIT.

Under Sections 27(E) and 28(A)(2) of the NIRC, domestic and resident foreign corporations which are subject to the regular CIT may be subject to a MCIT equivalent to 2% of gross income. The 2% MCIT rate approximates the corporate tax payable by said corporations given a rate of return of 6% per annum on their gross income[11]. The idea behind this is that the corporations should at least earn 6% of their gross income as net income, and based on 6% rate of return, pay 2% of their gross income as income tax. Thus, corporations that do not realize a rate of return of 6% including those that are incurring losses are required to pay the 2% MCIT. The provision which allows corporations to carry forward or claim as tax credit any excess MCIT paid ensures that only those which are perennially losing would be hit by the said tax.

The MCIT is imposed whenever a corporation has zero or negative taxable income or whenever the amount of minimum corporate income tax is greater than the regular income tax due from such corporation[12]. A corporation starts to be covered by the MCIT beginning on the fourth (4th) taxable year immediately following the taxable year in which such corporation commenced its business operations. The period of reckoning which is the start of its business operations is the year when the corporation was registered with the BIR. This rule applies regardless of whether the corporation is using the calendar year or fiscal year as its taxable year.

Furthermore, corporations which are subject to special corporate tax treatment do not fall within the coverage of the MCIT. Thus, in the case of domestic corporations whose operations or activities are partly covered by the regular income tax and partly by special income tax system, the MCIT shall apply only on the operations covered by the former.

The imposition of the MCIT however, is not absolute and may be suspended under certain conditions. The Secretary of Finance, upon the recommendation of the Commissioner of Internal Revenue, may suspend the imposition of the MCIT upon the submission of proof by the applicant-corporation, duly verified by the Commissioner's authorized representative, that the corporation sustained substantial losses on account of a prolonged labor dispute[13], or because of "force majeure"[14], or because of legitimate business reverses[15].

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[11] NTRC 1997 Tax Reforms and Developments, 25th Annual Report, 1998, p. 11.

[12] Per Revenue Regulations No. 9-98, Subject: Implementing Republic Act No. 8424, "An Act Amending the National Internal Revenue Code, As Amended" Relative to the Imposition of the Minimum Corporate Income Tax (MCIT) on Domestic Corporations and Resident Foreign Corporations". Issued on August 25, 1998.

[13] The term "substantial losses from a prolonged labor dispute" means losses arising from a strike staged by the employees which lasted for more than six (6) months within a taxable period and which has caused the temporary shutdown of business operations. [RR 9-98]

[14] The term "force majeure" means a cause due to an irresistible force as by "Act of God" like lightning, earthquake, storm, flood and the like. This term shall also include armed conflicts like war or insurgency. [RR 9-98]

C. Deductions Allowed to Corporations

To arrive at the taxable net income, domestic and resident foreign corporations are entitled to claim the following items of deductions from the gross income enumerated under Sec. 34 of the NIRC, as amended: (a) ordinary and necessary expenses; (b) interest; (c) taxes; (d) losses; (e) bad debts; (f) depreciation; (g) depletion of oil and gas wells and mines; (h) charitable and other contributions; (i) research and development; and (j) pension trusts.

In lieu of the deductions enumerated above, a corporation subject to tax may elect a standard deduction in an amount not exceeding forty percent (40%) of its gross income.

The concept of optional standard deduction (OSD) was first introduced in 1950 under RA 590 but the same was only made available to individuals, the purpose of which is to simplify the income taxation of small-scale businesses.

In the case of the corporations, it was only in 2008 under RA 9504 that they were allowed to avail of the OSD. It bears stressing, however, that the bases for purposes of computing the OSD for individuals and corporate taxpayers are different. Presently for individuals, the 40% OSD is based on the gross sales or gross receipts (GS/GR), while for corporations, the 40% OSD is based on the GI. In the case of individuals, the tax rate is applied to the resulting amount after deducting from GS/GR 40% OSD thereof, while for corporations, the cost of sales or gross receipts is first deducted from GS/GR after which 40% OSD is deducted therefrom to arrive at the tax base on which the tax rate is applied.

III. CORPORATIONS WITH EXEMPTIONS OR PREFERENTIAL TAX RATES UNDER THE NIRC OF 1997, AS AMENDED

A. Tax Exempt Corporations

1. Under Section 30 of the NIRC of 1997

The following organizations **which are not organized principally for profit** are exempt from CIT on income received by them as provided under Section 30 of the NIRC of 1997, as amended, to wit: (a) labor, agricultural or horticultural organizations; (b) mutual savings banks; (c) beneficiary societies or associations; (d) cemetery companies owned and operated exclusively for the benefit of its members;(e) nonstock corporations or associations organized and operated exclusively for religious, charitable, scientific, athletic, or cultural purposes, no part of its net income or asset inure to the benefit of any specific

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[15] The term "legitimate business reverses" shall include substantial losses sustained due to fire, robbery, theft or embezzlement, or for other economic reason as determined by the Secretary of Finance. [RR 9-98]

person; (f) chambers of commerce; (g) civic leagues or organizations operated exclusively for the promotion of social welfare; (h) nonstock and nonprofit educational institutions; (i) government educational institutions; (j) farmers' or other mutual typhoon or fire insurance companies, mutual ditch or irrigation companies, mutual or cooperative telephone companies, or the like; and (k) farmers' fruit growers' or like associations.

The above organizations were explicitly enumerated as income tax-exempt since the first codification of internal revenue laws of the Philippines in 1939, except for educational institutions which were later added to the original list. In particular, EO 37 (1986) added government educational institutions while RA 8424 (1997) added non-stock and nonprofit educational institution to the said list of exempt corporations.

On the other hand, RA 8424 removed from the original list of exemptions the following (a) loan and building association, (b) club organized and operated exclusively for pleasure, recreation, and other non-profitable purposes where no part of the net income of which inures to the benefit of any private stockholder or member and (c) corporation or association organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which is itself exempt from the CIT.

RA 8424 likewise added a provision which states that the income of whatever kind and character of the foregoing organizations from any of their properties, real or personal, or from any of their activities conducted for profit regardless of the disposition made of such income, shall be subject to the CIT. This means that, if a tax exempt corporation conducts "any" activity for profit, such activity is not tax exempt even as its "not-for-profit" activities remain tax exempt.

In July 2013, the Bureau of Internal Revenue (BIR) issued Revenue Memorandum Order (RMO) 20-2013[16] which provides that associations and corporations under Section 30 of the NIRC, as amended, including those which have been issued tax exemption rulings/certificates prior to June 30, 2013 shall file their respective applications for Tax Exemption/Revalidation with the BIR not later than December 31, 2013, otherwise, said tax exemptions of non-stock, non-profit organizations shall be deemed revoked. The tax exemption ruling shall be valid for a period of three (3) years from the date of effectivity specified in the ruling, unless sooner revoked or cancelled. In relation to this, BIR issued Revenue Memorandum Circular (RMC) No. 8-2014[17] stating among others that failure to present a valid, current, and subsisting Tax Exemption Ruling to withholding

[16] Subject: Prescribing the Policies and Guidelines in the Issuance of Tax Exemption Rulings to Qualified Non-Stock, Non-Profit Corporations and Associations Under Section 30 of the National Internal Revenue Code of 1997, as Amended. Issued on July 22, 2013.

[17] Subject: Presentation of Tax Exemption Certificate or Ruling by Exempt Individuals and Entities. Issued on February 6, 2014.

agents would mean being subjected to applicable withholding taxes. These two (2) issuances by the BIR have spurred various oppositions leading affected taxpayers to seek redress from the Supreme Court (SC) to invalidate the same.

To clarify the rules laid down under the said issuances, the BIR issued RMO 34-2014[18]. It declared that tax exemption rulings (TERs) do not confer tax exemptions which are not provided for by law, nor it abrogate those exemptions which are granted by the law. In the review of applications for TERs, the BIR merely seeks to validate/confirm whether the conditions set forth by law for the grant of tax exemption are present or whether such conditions have been complied with by the applicant. Hence, non-stock, non-profit entities with valid and existing TERs are presumably compliant with the conditions for availment of tax exemption *with respect to any income earned as such.* It further clarified that the absence of a valid, current and subsisting TERs will not operate to divest qualified entities of the tax exemption provided under the Constitution or Section 30 of the NIRC of 1997, as amended.

2. Exempt Government Owned and Controlled Corporations (GOCCs) under Section 27(C) of the NIRC of 1997, as amended

Under RA 8424, GSIS, SSS, PCSO, PHIC, and Philippines Amusement and Gaming Corporation (PAGCOR) were specifically provided an exemption from the CIT. In 2005, with the subsequent enactment of RA 9337, however, PAGCOR was excluded from the enumeration of tax exempt GOCCs. By reason of such removal, PAGCOR questioned the constitutionality of RA 9337, but in 2011[19], the SC upheld the legality of the amendatory law. On April 17, 2013, BIR issued RMC 33-2013[20] declaring that PAGCOR as well as its contractees and licensees, is now subject to the 30% CIT under NIRC of 1997, as amended, in addition to the 5% franchise tax on its gross revenue under its Section 13(2)(a) of PD 1869 or its charter. PAGCOR questioned the validity of the RMC alleging that it erroneously implemented the 2011 SC decision. In the clarificatory ruling[21], the SC recognized that PAGCOR earns two types of income: (1) those from gaming operations which are within its franchise; and (2) those income from other related services. The SC declared that, as a result of the removal of PAGCOR from the list of tax-exempt entities, it became subject to regular income tax but only with respect to its income from related services. PAGCOR's income

[18] Subject: Clarifying Certain Provisions of Revenue Memorandum Order (RMO) No. 20-2013, as amended by RMO 28-2013, on the issuance of Tax Exemption Rulings for Qualified Non-Stock, Non-Profit Corporations and Associations under Section 30 of the National Internal Revenue Code of 1997, as amended. Issued on September 18, 2014.

[19] PAGCOR vs BIR, GR No. 172087, March 15, 2011.

[20] Entitled "Income Tax and Franchise Tax Due From the Philippine Amusement and Gaming Corporation (PAGCOR), Its Contractees and Licensees".

[21] G.R. No. 215427 dated Dec. 10, 2014.

and revenue from gaming operations conducted under its franchise remain subject to 5% franchise tax, in lieu of all taxes, as provided under its charter.

As regards local water districts (LWDs), they were included among the list of exempt corporations pursuant to RA 10026[22] in 2010. Meanwhile, with the passage of RA 10963 on December 19, 2017, the tax-exempt status of the PCSO was lifted.

Presently, under Section 27 (C) of the NIRC of 1997, as amended, the following GOCCs are exempt from the CIT: GSIS, SSS, PhilHealth, and LWDs.

Table 2. EXEMPT GOCCs UNDER SECTION 27 (C) OF THE NIRC OF 1997, AS AMENDED

Legal Basis	Exempt GOCCs
RA 8424	GSIS, SSS, PHIC, PCSO, PAGCOR
RA 9337	Removed PAGCOR
RA 10026	Included LWDs
RA 10963	Removed PCSO

Aside from the exempt GOCCs under the NIRC, there are also other GOCCs that are granted exemption from income tax by special laws. Example of this are: Tourism Promotion Board (TPB), Tourism Infrastructure and Enterprises Zone Authority (TIEZA), Duty Free Philippines Corporations (DFPC), by virtue of RA 9593; and Pag-IBIG Fund under RA 9679. There are also some GOCCs that are exempt from income tax because of the 5% tax on GIE as mentioned earlier, in lieu of income tax, VAT, local taxes, and other taxes.

B. Preferential Tax Rates of Certain Corporations

Under the NIRC, certain types of corporations are accorded preferential tax rates. **Table 3** presents a summary of the tax base and tax rates of these corporate taxpayers.

[22] Entitled, "An Act Granting Income Tax Exemption to Local Water Districts by Amending Section 27(C) of the National Internal Revenue Code (NIRC) of 1997, as Amended, and Adding Section 289-A to the Code, for the Purpose", Lapsed into law on march 11, 2010.

Table 3. CORPORATE TAXPAYERS WITH PREFERENTIAL TAX RATES UNDER THE NIRC OF 1997, AS AMENDED

Taxpayers	NIRC Section	Tax Base	Tax Rates
1. Domestic Corporations			
a. Proprietary Educational Institutions and Hospitals	Sec. 27(B)	NTI	10% or 30%[23]
b. Depository Banks Under the EFCDS	Sec. 27(D)(3)	NTI	30% or, 10%, or exempt%[24]
2. Resident Foreign Corporations			
a. International Carriers	Sec. 28(A)(3)	Gross Philippine Billings (GPB)	2.5%, or Preferential Tax Rate, or Exempt[25]
b. Offshore Banking Units	Sec. 28(A)(4)	NTI	30%, or 10%, or Exempt[26]
c. Regional or Area Headquarters of Multinational Corporations	Sec. 28(A)(6)(a)	-	Exempt
d. Regional Operating Headquarters of Multinational Corporations	Sec. 28(A)(6)(b)	NTI	10%
e. Depository Banks Under the EFCDS	Sec. 28(A)(7)(b)	NTI	30%, or 10%, or exempt[27]
3. Non-Resident Foreign Corporations			
a. Nonresident Cinematographic Film Owners, Lessors or Distributors	Sec. 28(B)(2)	GI	25%
b. Nonresident Owner or Lessor of Vessels Chartered by Philippines Nationals	Sec. 28(B)(3)	GI	4.5%
c. Nonresident Owner or Lessor of Aircrafts, Machineries, and Other Equipment	Sec. 28(B)(4)	GI	7.5%

[23] In general, proprietary educational institutions and hospitals are subject to 10% tax on their NTI. However, if the gross income from unrelated trade, business or other activity exceeds fifty percent (50%) of the total gross income derived by such corporation from all sources, the tax applicable is the normal/regular income tax of 30% of the NTI. [Sec. 27(B) of the NIRC of 1997, as amended]

[24] Income of depository banks under the EFCDS is subject to 30% of NTI, except income of depository banks on foreign currency transactions with non-residents, other OBUs, local commercial banks including branches of foreign banks that may be authorized by the Central Bank to transact business with OBUs earned which is exempt. Interest income from foreign currency transaction with residents is subject to a final tax of 10%.

[25] Per RA 10378 (March 7, 2013), the applicable tax treatment depends on the principle of reciprocity or applicable tax treaty or international agreement. RR 15-13 provides for the guidelines on the availment of preferential tax treatment or exemption from income tax.

[26] Same with depository banks under the EFCDS.

[27] Same with depository banks under the EFCDS.

1. Proprietary Educational Institutions and Hospitals

Under Section 27(B) of the NIRC of 1997, as amended, proprietary educational institutions and hospitals which are non-profit are taxed at 10% of their NTI. In cases, however, that their gross income from unrelated trade, business or activity exceeds 50% of their total gross income derived from all sources, the regular CIT of 30% is imposed on the entire NTI of these institutions. On the other hand, under Section 30 of the same Tax Code, non-stock and non-profit educational institutions are exempt from corporate income tax.

It is noted that as early as 1939, pursuant to CA 466, corporations or associations organized and operated exclusively for educational purposes, no part of the net income of which inures to the benefit of any private stockholders or individuals were already granted income tax exemption.

In 1951, however, private educational institutions were subjected to tax although at a lower rate of 10% of NTI pursuant to RA 600. The 10% tax rate continued to be levied on these institutions except those specifically exempt as provided under CA 466.

In 1986, EO 37 retained the 10% tax rate of private educational institutions whether stock or non-stock. It however provided that in cases where the gross income from unrelated trade, business or activity exceeds 50% of the total gross income derived from all sources, the entire income of such educational institutions shall be levied the RCIT rate of 35%. Lastly, RA 8424 added in then Section 24(b) [now Section 27(B)], proprietary hospitals which are non-profit to proprietary educational institution enjoying the preferential tax treatment of 10% under the same condition as discussed above.

The addition of this new provision spurred judicial controversy vis-à-vis Section 30(E) and (G) of the NIRC of 1997, as amended, referring to charitable and social welfare institutions. Some believed that the introduction of Section 27(B) removes the income tax exemption of proprietary non-profit hospitals under Section 30(E) and (G). The Court however ruled otherwise. Section 27(B) on one hand, and Section 30I and (G) on the other hand, can be construed together without the removal of such tax exemption. The effect of the introduction of Section 27(B) is to subject the taxable income of two specific institutions, namely, proprietary non-profit educational institutions and proprietary non-profit hospitals, among the institutions covered by Section 30, to the 10% preferential rate under Section 27(B) instead of the ordinary 30% CIT under the last paragraph of Section 30 in relation to Section 27(A)(1). The only qualifications for hospitals are that they must be proprietary and non-profit. "Proprietary" means private, following the definition of a "proprietary educational institution" as "any private school maintained and administered by private individuals or groups" with a government permit. "Non-profit" means no net income or asset accrues to or benefits any member or specific person, with all the net income or asset devoted to the institution's purposes and all its activities conducted not for profit[28].

[28] Commissioner of Internal Revenue vs St. Luke's Medical Center, G.R. No. 195909 and 195960, September 26, 2012.

Table 4 below presents the historical development of the preferential tax treatment accorded to proprietary educational institutions and hospitals which are non-profit.

Table 4. HISTORICAL CHANGES IN THE TAX TREATMENT OF PROPRIETARY EDUCATIONAL INSTITUTIONS AND HOSPITALS

Legal Basis	Corporate Taxpayer	Tax Base	Tax Rate
CA 466 (June15, 1939)	Corporation or association organized and operated exclusively for religious, charitable, scientific, athletic, cultural, or *educational purposes*, or for the rehabilitation of veterans no part of the net income of which inures to the benefit of any private stockholder or individual	-	Exempt
RA 600 (March 28, 1951)	Private educational institutions	NTI	10%
RA 5431 (June 27, 1968)	Private educational institutions other than those exempt under Section 27I of CA 466	NTI	10%
EO No. 37 (July 31, 1986)	Section 24(b). Private Educational Institutions Private educational institutions, whether stock or non-stock • In general • If gross income from unrelated trade, business or activity exceeds 50% of the gross income from all sources	 NTI NTI	 10% 30%
	Section 27. Exemptions Government educational institution	-	Exempt
RA 8424 (December 11, 1997)	Section 27. Proprietary Educational Institutions and Hospitals Proprietary educational institutions and hospitals which are non-profit • In general • If gross income from unrelated trade, business or activity exceeds 50% of the gross income from all sources	 NTI NTI	 0% 30%
	Section 30. Exemptions (H) Non-stock and non-profit educational institutions (I) government educational institutions	 - -	 Exempt Exempt

2. Offshore Banking Units (OBUs)

Offshore banking system was established in the Philippines in 1976 by virtue of PD 1034[29]. An OBU means a branch, subsidiary or affiliate of a foreign banking corporation which is duly authorized by the Central Bank of the Philippines to transact offshore banking business in the Philippines. Under the tax and other incentives provision of the aforementioned law, transactions of OBUs in the Philippines with non-residents and other OBUs shall be subject to a tax of 5% of the net income from such transaction which shall be in lieu of all taxes on the said transactions. However, transactions with local commercial banks, including branches of foreign banks that may be authorized by the Central Bank to transact business with OBUs shall be subject to a 5% tax on the net income in lieu of all taxes, 'except net income tax' subject to the RCIT. Further, interest income of OBUs from foreign currency loans granted to residents is subject to a final tax of 10%. Lastly, income of non-residents from transaction with OBUs are exempt.

The income tax treatment of OBUs was maintained in 1977 with the codification of all tax laws under PD 1158-A. However, in 1997 the sweeping tax exemption of OBUs was lifted via RA 8424 and all their income including interest income derived from foreign currency loans were subjected to a final tax of 10%. It was only in 2004 pursuant to RA 9294[30] that the tax exemption of OBUs was restored under its "exempt from all taxes" provision with respect to its income from foreign currency transactions (FCTs) with non-residents, OBUs in the Philippines, and local commercial banks, including local branches of foreign banks authorized to transact business with OBUs. On the other hand, interest income from FCTs of OBUs with residents is subject to a final tax of 10%. Income derived by non-residents, whether individual or corporations, from transactions with OBUs is exempt.

It should be mentioned however, that the exemption provision of OBUs is limited only to income derived from FCTs and not to any other income arising from transactions not in foreign currency, e.g., rental income, consultancy fees and gains, that remain to be subject to the 30% RCIT based on net, or to final tax[31]. For clarity, the following is the tabular presentation of the changes in the tax treatment of OBUs in the Philippines. **(Table 5)**

[29] Entitled. "Authorizing the Establishment of an Offshore Banking System in the Philippines", issued on September 30, 1976.

[30] Entitled, "An Act Restoring the Tax Exemption of Offshore Banking Units (OBUS) and Foreign Currency Deposit Units (FCDUS), Amending for the Purpose Section 27 (D) and Section 28, Paragraphs (A) (4) and (A) (7) (B) of the National Internal Revenue Code as Amended", approved on April 28, 2004.

[31] Benedicta Du-Baladad, "Taxation of Banks and Non-Bank Financial Intermediaries in the Philippines", First Edition, 2010, p. 211-233.

Table 5. HISTORICAL CHANGES IN THE TAX TREATMENT OF OBUs UNDER SECTION 28(A)(4) OF THE NIRC, AS AMENDED

Transactions	Tax Treatment						
	PD 1034 (1976)	PD 1158-A (1977)	EO 37 (1986)		RA 8424 (1998)	RA 9294 (2004)	
			FCTs	Non-FCTs		FCTs	Non-FCTs
Transactions with non-residents and other OBUs	5% in lieu of all taxes	5% in lieu of all taxes	Exempt from all taxes except net income subject to RCIT	10%, or 30%	10%	Exempt from all taxes except net income subject to RCIT	10% or 30%
Transactions with local commercial banks, including branches of foreign banks that may be authorized by the BSP to transact business with OBUs	5% in lieu of all taxes, except net income subject to RCIT	5% in lieu of all taxes, except net income subject to RCIT	Exempt from all taxes except net income subject to RCIT	Exempt, or 30%	10%	Exempt from all taxes except net income subject to RCIT	10% or 30%
Income of Non-residents from transaction with OBUs	Exempt	Exempt	Exempt	Exempt	Exempt	Exempt	Exempt
Interest income from loan granted to residents	10% FT	10% FT	10% FT	10% FT	10% FT	10% FT	10% FT

3. Expanded Foreign Currency Deposit Units (EFCDUs)

Foreign currency deposit system was instituted way back 1974, under RA 6426[32]. Under this law, interest on foreign currency deposits belonging to non-residents not engaged in trade or business in the Philippines was expressly exempted from income tax[33]. In 1976, simultaneous with the establishment of offshore banking system, PD 1035 expanded the foreign currency lending authority of depository banks under RA 6426. Under this decree, net income from foreign currency loans and transactions of depository banks under EFCDS with non-residents, OBUs in the

[32] Entitled, "An Act Instituting a Foreign Currency Deposit System in the Philippines, and for Other Purposes" approved on April 4, 1974.

[33] The exemption of foreign currency deposit was later on expanded by virtue of PD 1246 (November 21, 1977) which states that all foreign currency deposits made to OBUs and depository banks under EFCDS, including interest and all other income or earnings of such deposits, are exempt from any and all taxes whatsoever irrespective of whether or not these deposits are made by residents or non-residents so long as the deposits are eligible or allowed and, in the case of non-residents, irrespective of whether or not they are engaged in trade or business in the Philippines.

Philippines and other depositary banks under EFCDS shall be subject to a 5% tax which shall be in lieu of all taxes on said transactions, except net income subject to RCIT. Similar with OBUs, the tax treatment of depository banks under EFCDS was maintained under PD 1158-A, withdrawn via RA 8424, and was restored by RA 9294. **Table 6** below is the summary of changes in the tax treatment of depository banks under EFCDS.

Table 6. HISTORICAL CHANGES IN THE TAX TREATMENT OF DEPOSITORY BANKS UNDER EFCDS

Type of Income	Tax Rate			
	PD 1035 (1976)	**PD 1158-A (1977)**	**RA 8424 (1998)**	**RA 9294 (2004)**
Income from foreign currency loan and transactions with non-residents, OBUs and other depository banks under EFCDS	5% of the NTI in lieu of all taxes, except net income subject to RCIT	5% of the NTI in lieu of all taxes, except net income subject to RCIT	10% FWT	Exempt from all taxes except net income subject to RCIT
Interest income from foreign currency loans granted by such depository bank under EFCDS to residents	10% FWT	10% FWT	10% FWT	Exempt from all taxes except net income subject to RCIT
Income of non-residents not engaged in trade or business in the Philippines from foreign currency loans to depository banks under EFCDS	Exempt	Exempt	Exempt	Exempt

4. Regional or Area Headquarters (RAHQs) of Multinational Corporations and Regional Operating Headquarters (ROHQs) of Multinational Corporations

Under Section 28(A)(6) of the NIRC, as amended, RAHQs established in the Philippines by multinational companies and which headquarters do not earn or derive income from the Philippines and which act as supervisory, communications and coordinating centers for their affiliates, subsidiaries, or branches in the Asia-Pacific Region and other foreign markets are exempt from income tax. On the other hand, ROHQs are subject to a tax rate of ten percent (10%) of their NTI.

The exemption of RAHQs from income tax was introduced under Article 63 EO 226[34] otherwise known as the Omnibus Investments Code of 1987. When RA

[34] Entitled, "The Omnibus Investments Code of 1987", issued on July 16, 1987.

8424 was passed, the exemption of RAHQ from income tax was maintained and subjected ROHQs to a preferential tax rate of 10% of the NTI, provided that any income derived from Philippine sources by the ROHQ when remitted to the parent company shall be subject to the branch profits remittance tax (BPRT).

5. International Carriers[35]

International carriers doing business in the Philippines are subject to 2.5% tax based on their Gross Philippine Billings (GPB)[36] pursuant to Section 28(A)(3) of the NIRC of 1997, as amended or to the applicable tax treaty rate.

Prior to the imposition of the 2.5% GPBT under Section 24(b)(2) of PD No. 69 (November 24, 1972), international carriers as resident foreign corporations were taxed on the basis of their net income from Philippine sources at the rate of 25% on the first PhP100,000 and 35% on the excess over such amount. Under the system, however, the government encountered several administrative problems, particularly in determining the net income from the Philippine sources which involved allocation of income and deductions. It involved the checking of books of international carriers, usually kept in their respective countries to obtain proper amounts allowable as deductions from their Philippine gross income. There was also lack of uniformity in the income tax laws of the various countries where international carriers are engaged in business. This required securing separate financial statements from various foreign corporations, thus presenting additional inconveniences both to the government and to the taxpayer.

With the omnibus amendments to the Tax Code by PD 69, the aforementioned administrative problems were eliminated by the adoption of the GPBT. The rate of 2.5% which is imposed on GPB of international carriers was determined by assuming a 90% ratio of deductions to the corporation's Philippine gross income and the application of the previous lower corporate income tax rate of 25% on the assumed 10% net income.

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[35] Source: National Tax Research Center, Memorandum dated September 28, 1973 Re: Comments on the Letter of Mr. Arevalo to BOI Chairman Paterno (Re: 2 ½ Income Tax on Common Carrier), as cited in NTRC Tax Research Journal, "International Carriers Taxation in the Philippines", Volume XXIV.2, March-April 2012.

[36] GPB refers to the amount of gross revenue derived from the carriage of persons, excess baggage, cargo and mail originating from the Philippines in a continuous and uninterrupted flight, irrespective of the place of sale or issue and the place of payment of the ticket or passage document. Tickets revalidated, exchanged and/or indorsed to another international airline form part of the GPB if the passenger boards a plane in a port or point in the Philippines. However, flights which originate from the Philippines, but transshipment of passenger takes place at any port outside the Philippines on another airline, only the aliquot portion of the cost of the ticket corresponding to the leg flown from the Philippines to the point of transshipment shall form part of GPB. For international shipping, GPB means gross revenue whether for passenger, cargo or mail originating from the Philippines up to final destination, regardless of the place of sale or payments of the passage or freight documents.

The present GPBT is an approximation of what would otherwise be the tax liability under the net income basis and was adopted for ease of administration. The difference in the tax treatment favors the international carriers since as computed, the 2.5% GPBT approximates the then 25% CIT based on NTI. If the approximation made before will be applied to the present 30% CIT rate, the GPBT should be 3% instead of 2.5%. International carriers are further favored by the reduced tax rate of 1.5% if there is a tax treaty between the Philippines and the country of the concerned international air carrier.

6. Non-Resident Cinematographic Film Owners, Lessors or Distributors, Non-Resident Owner or Lessor of Vessels, Chartered by Philippine Nationals, and Non-Resident Owner or Lessor of Aircrafts, Machineries and other Equipment

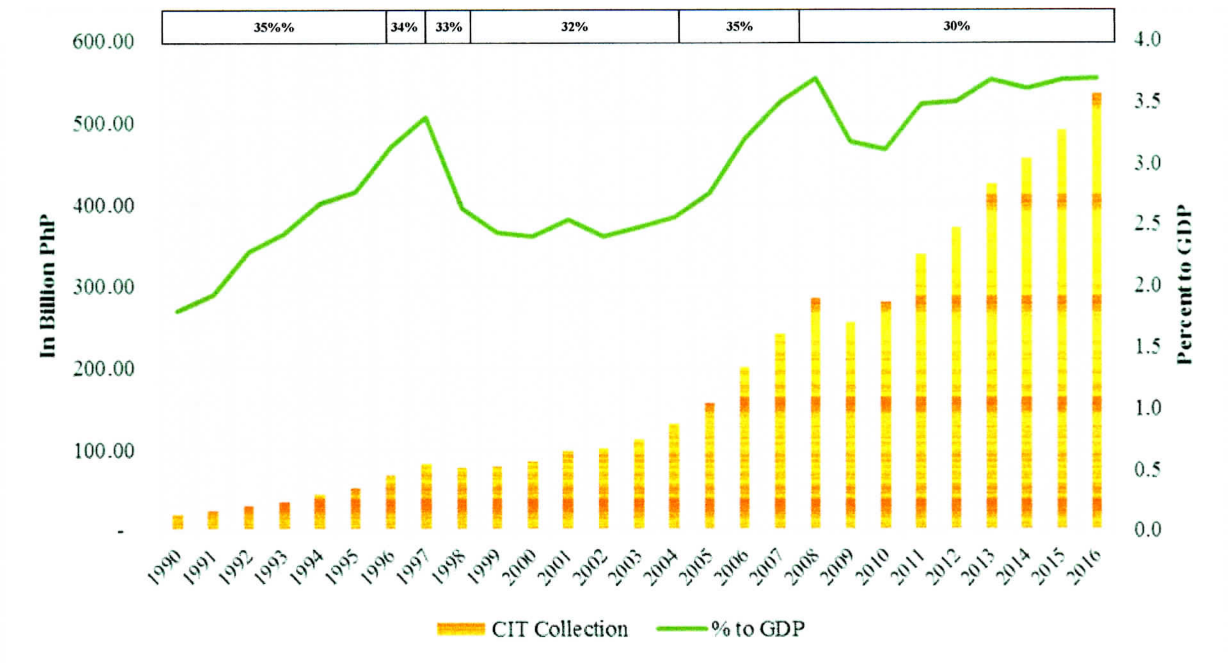
At present, under Section 28(B)(2), (3) and (4) of the NIRC of 1997, as amended, cinematographic film owners, lessors and distributors are taxed at 25% of their gross income from all sources within the Philippines. On the other hand, non-resident owner or lessor of vessels chartered by Philippine national and non-resident owner or lessor of aircrafts, machines and other equipment are subject to 4.5% and 7.5% of gross rentals or fees, respectively.

The above-mentioned non-residents have been accorded the preferential tax rates since 1977 pursuant to PD 1158-A, although in the case of non-resident cinematographic film owners, lessors or distributors, prior to this, they were accorded the preferential rate of 15% of gross income pursuant to PD 69.

IV. CORPORATE INCOME TAX REVENUE PERFORMANCE, 1990-2016

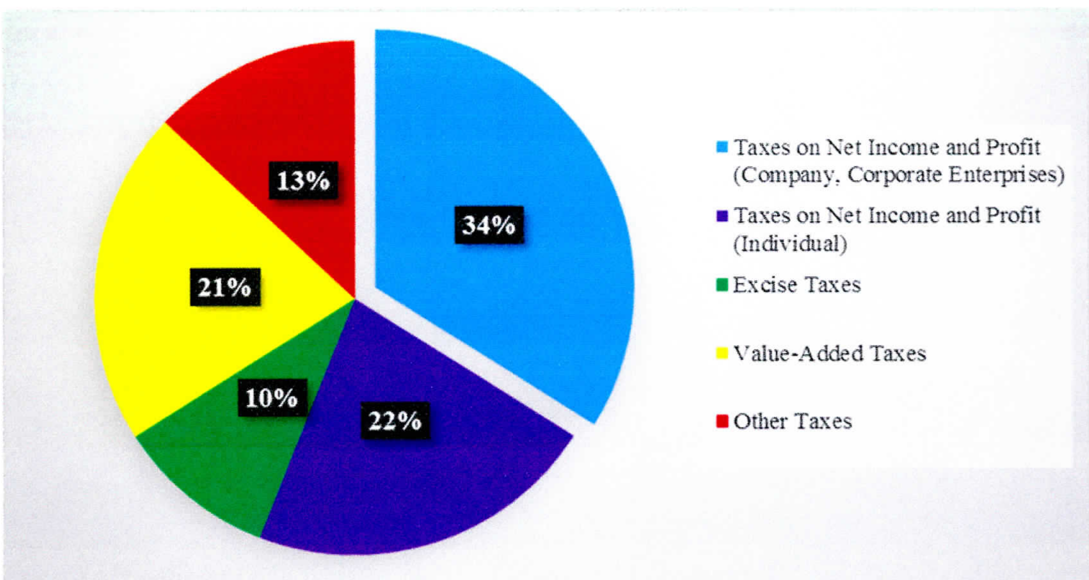
The CIT collection was on an uptrend from 1990 (PhP19.30 billion) to 1997 (PhP81.90 billion) but declined in 1998 (PhP77.66 billion) when the CIT rate was reduced from 35% to 34%. In 1999 and 2000 however, there was a slight increase in the CIT collection, notwithstanding the further reduction of the CIT rate to 33% and 32%, respectively. Since then until 2008, the CIT collections managed a modest growth with the increase in the tax rate to 35%. In 2009, CIT collection (PhP254.37) dipped by 20% when the CIT was reduced from 35% to 30% with the full year implementation of RA 9337 or the Reformed VAT (RVAT) law, but consistently increased in the succeeding years until 2016 (PhP534.36 billion). The figure above also shows erratic trend of the CIT collection as percent to GDP with the highest percentage of 3.7% recorded in 2008 when the CIT rate was at 35%. **(Figure 1)**

Figure 1. CIT COLLECTION AND PERCENT TO GDP, 1990-2016



In 2016, the collection from the CIT comprised 34% of total BIR revenue collection. Of this percentage, 42% are collections from the regular income while the remaining 58% are collections from taxes on passive income such as capital gains and interest on bank deposits, and tax on branch profit remittances, among others.

Figure 2. BIR COLLECTION BY TYPE OF TAX, 2016



Source of Data: BIR 2016 Annual Report

The number of annual tax returns filed by corporations (BIR Form 1702) was generally increasing from 2006 to 2013 although a remarkable decline in the number was observed in 2014 and 2016. **(Table 7)**

Table 7. CIT COLLECTION AND TAX RETURNS FILED, 2006-2016

Particulars	No. of Tax Returns Filed	Growth Rate
2006	130,915	-
2007	152,420	16.4%
2008	148,399	-2.6%
2009	148,727	0.2%
2010	160,679	8.0%
2011	172,391	7.3%
2012	171,130	-0.7%
2013	179,665	5.0%
2014	147,542	-17.9%
2015	163,478	10.8%
2016	114,051	-30.2%

Source of Basic Data: BIR

Available data on CIT collection by type of corporation reveal that domestic corporations contributed 98% of the total collection and the remaining 2% by foreign corporations. **(Table 8)**

Table 8. CIT COLLECTION BY TYPE OF CORPORATION, 2006-2016

Year	Domestic Corp.	Resident Foreign Corp.	Non-resident Foreign Corp.	Total
2006	95.0%	3.6%	1.4%	100.0%
2007	98.1%	1.4%	0.5%	100.0%
2008	98.1%	1.0%	0.9%	100.0%
2009	98.1%	1.0%	0.9%	100.0%
2010	97.2%	1.9%	1.0%	100.0%
2011	98.7%	0.6%	0.7%	100.0%
2012	98.7%	0.7%	0.6%	100.0%
2013	98.6%	0.7%	0.7%	100.0%
2014	98.6%	1.1%	0.3%	100.0%
2015	99.0%	0.7%	0.3%	100.0%
2016	99.0%	0.8%	0.2%	100.0%

V. COMPARATIVE CIT SYSTEM IN ASEAN MEMBER-COUNTRIES[37]

A. Regular Corporate Tax Rates\

Among the member-countries in the ASEAN, the Philippines imposes the highest CIT rate at 30%, while Singapore levies the lowest at 17%. **(Table 9)**

Table 9. COMPARATIVE RCIT AND MCIT RATES AMONG THE ASEAN MEMBER-COUNTRIES, 2017

Country	RCIT		MCIT	
	Rate	Base	Rate	Base
Brunei	18.5%	Chargeable income	-	-
Cambodia	20%	Net Profit	1%	Annual turnover
Indonesia	25%	NTI	-	-
Laos	24%	Net Profit	-	-
Malaysia	24%	NTI	MYR 20,000 (PhP267,724) or 3%	Audited net profits
Myanmar	25%	NTI	-	-
Philippines	***30%***	**NTI**	**2%**	**GI**
Singapore	17%	Net Profit	-	-
Thailand	20%	Taxable Profits	-	-
Vietnam	20%	Net Profits	-	-

Source: PWC Worldwide Tax Summaries, 2017.

However, despite having the highest CIT rate, the country's CIT effort is lower than those of Malaysia, Thailand, and Vietnam **(Table 10).** This is basically due to the grant of generous tax incentives by various IPAs such as the Board of Investments (BOI) and PEZA, among others, to their registered enterprises. The tax incentives include income tax holidays (ITH), special rate of 5% of gross income earned in lieu of all national and local taxes, tax and duty-free importation of raw materials, capital equipment, machineries and spare parts, among others. Various industries/sectors are also granted tax incentives under special laws (e.g. downstream oil industry, jewelry manufacturing, tourism industry, etc.).

As a consequence, there are significant foregone revenues from incentives which are not time-bound. Based on available data, investment tax expenditures from ITH and the 5% special rate and customs duty exemption amounted to PhP104.4 billion in 2015 from 5,155 e-FPS filers. **(Table 11)** It should be mentioned that pursuant to RA 10708[38], otherwise known as the "Tax Incentives Management and Transparency Act (TIMTA)", IPA-registered entities are mandated to report their actual claimed tax incentives starting 2016.

[37] For conversions to Philippine peso, the following exchange rates were used as of April 24, 2018: (a) MYR 1 = PhP13.3862; (b) 1BND = PhP39.52; (c) 1KHR = PhP0.0129467; (d) 1IDR = PhP0.00376593; (e) 1LAK = PhP0.00376628; (f) 1SGD = PhP39.5510; and (g) 1THB = PhP1.66189. Source: XE Currency Converter

[38] Entitled, "An Act Enhancing Transparency in the Management and Accounting of Tax Incentives Administered by Investment Promotion Agencies", approved on December 9, 2015.

Table 10. COMPARATIVE CIT EFFORT AND REVENUE PRODUCTIVITY IN SELECTED ASIAN COUNTRIES

Country	Year	CIT Revenue as % of GDP	Revenue Productivity
Philippines	2015	3.7	12
Cambodia[b/]	2012	1.3	7
China[b/]	2012	3.5	14
Indonesia[a/]	2015	2.7	11
Lao PDR[b/]	2012	2.4	9
Malaysia[a/]	2015	6.5	27
Singapore[a/]	2015	3.5	21
Vietnam[b/]	2012	7.3	29
Thailand[b/]	2012	6.1	31

a/ Source: OECD iLibrary
b/ Source: IMF Fiscal Monitor Database, World Bank, PWC

Table 11. PHILIPPINE INVESTMENT TAX EXPENDITURES, 2012-2015 (In Billion PhP)

IPA	2012		2013		2014		2015*	
	No. of e-FPS Filers	Total Tax Expenditure	No. of e-FPS Filers	Total Tax Expenditure	No. of e-FPS Filers	Total Tax Expenditure	No. of e-FPS Filers	Total Tax Expenditure
Board of Investments (BOI)	585	24.27	182	27.55	242	33.09	889	29.40
Bases Conversion and Development Authority (BCDA)	-	-	-	-	-	-	2	0.003
Philippine Economic Zone Authority (PEZA)	1,390	129.18	1,042	108.03	1,906	84.22	2,444	66.57
Authority of the Freeport Area of Bataan (AFAB)	22	.30	34	0.08	36	0.44	87	0.75
Cagayan Economic Zone Authority (CEZA)	18	0.05	10	0.05	108	0.33	171	0.46
Clark Development Corporation (CDC)	91	2.12	90	5.14	191	4.46	578	4.10
Poro Point Management Corporation (PPMC)	3	0.07	0	.003	2	0.05	6	0.05
Subic Bay Metropolitan Authority (SBMA)	364	3.89	302	5.95	356	3.63	959	2.97
Tourism Infrastructure and Enterprise Zone Authority (TIEZA)	-	-	-	-	-	-	4	0.08
Zamboanga City Special Economic Zone Authority	-	-	-	-	-	-	15	0.008
TOTAL	**2,473**	**159.89**	**1,660**	**146.80**	**2,843**	**126.22**	**5,155**	**104.4**

Note: Based on the TIMTA Database.
Source: DBM Budget and Expenditure Sources of Financing (BESF).

B. Minimum Corporate Income Tax (MCIT)

As gathered, only the Philippines, Cambodia and Malaysia impose a minimum corporate income tax among the ASEAN member-countries. In the Philippines, the MCIT is set at 2% of gross income and the excess MCIT may be carried forward and credited against the regular CIT in three (3) consecutive years.

Corporations in Cambodia may also be subject to the minimum tax (MT) rate of 1% of the annual turnover inclusive of all taxes except for the VAT. The MT is a separate and distinct annual tax from the standard CIT. A corporation will be subject to MT if the annual MT liability is higher than the annual standard CIT liability. There is no clear definition of the term turnover, but the General Department of Taxation adopts a very broad one which includes all income that are related to the main business, any subsidiaries and any other income. Currently MT is payable by all taxpayers that are subject to the self-declared regime of taxation except Qualified Investment Projects (QIPs) recognized by the Council for Development in Cambodia (CDC)[39], money exchange dealers and gold/diamond/gemstone small taxpayers (MT based on selling margin) and educational institutions (temporary suspension until 2018).

A corporation in Cambodia is required to make a prepayment of the CIT equals to 1% of monthly turnover inclusive of all taxes except the VAT. The prepayment of CIT can be used to offset against the annual CIT liability or the MT liability, whichever is applicable. If the prepayment of the CIT exceeds the annual CIT liability or MT liability, the excess prepayment of CIT can be carried forward and offset against future CIT liability accordingly. However, unutilized prepayments of CIT from prior years can be used to offset the current amount due and no physical payment may be required. There is no time frame, however, within which the excess pre-payments may be carried forward and credited[40]. A corporation which is subject to the MT, is still required to make a prepayment of the tax liabilities.

On the other hand, Malaysia has its own version of the MCIT, but its application is limited to Labuan companies only. The term 'Labuan' means the federal state of Labuan. Labuan companies are those incorporated under the Labuan Companies Act 1990, and include foreign Labuan companies registered under the said Act. A Labuan trading company[41] carrying on a Labuan business activity may elect to pay a fixed amount of MYR 20,000 (PhP267,724), or be taxed at 3% of the audited net profits. There

[39] General Department of Taxation of Ministry of Economy and Finance Website. < http://www.tax.gov.kh/en/bmin.php >, viewed on March 20, 2018.

[40] DFDL Cambodia Tax Brief: Anticipated Tax Changes to Take Effect in 2017 <https://www.dfdl.com/resources/legal-and-tax-updates/cambodia-tax-update-draft-law-on-financial-management-2017/ >, viewed on March 20, 2018.

[41] A Labuan trading company is defined as activity, which includes banking, insurance, trading, management, licensing, export, import, consultancy, wholesaler, agency and commissioner.
Source: <http://labuanbusiness.com/faq-on-labuan-company-taxation/>, viewed on March 20, 2018.

is no carry forward and/or credit against the regular CIT provision but it may make an irrevocable election to be taxed under the Income Tax Act of 1967[42].

C. Optional Standard Deduction (OSD)

The OSD is unique to the Philippines. It is the only ASEAN country which allows an OSD of 40% of the gross income in lieu of the itemized deductions for corporations. Thailand also adopts a standard deduction ranging from 10% to 60%, but the same is only made available to individual taxpayers engaged in business or the practice of a profession, and not to corporations[43].

D. Taxpayer Segmentation and Differentiated Taxation Thereof

D.1. Brunei Darussalam

Every corporation in Brunei Darussalam pays for each year of assessment a CIT at the rate of 18.5% of the chargeable income. Chargeable income includes income derived from a trade or business, as well as investment income, such as dividends received from companies not previously assessed to tax in Brunei, interest, discounts, rents, premiums, royalties and other profits arising from property. Certain income, however, are exempt from the CIT, e.g. dividends received from a company subject to tax in Brunei and income of specific government and non-profit organizations. Moreover, companies with revenue not exceeding BN$ 1 million (PhP40 Million) are likewise exempt from CIT[44].

Under Section 35(5) of the Income Tax Act (Chapter 35), exemption is granted to a newly incorporated company for the first BN$100,000 (PhP3.9 million) of its chargeable income during the first three consecutive years of assessment from the date of incorporation or registration. For the next BN$150,000 (PhP5.9 million) of chargeable income, the tax is charged at 50% of the applicable rate of taxation. The tax threshold was introduced primarily to help reduce the tax liabilities of small and medium-sized enterprises (SMEs) and encourage SME development[45].

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42 Deloitte, Taxation and Investment in Malaysia 2016, <https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-malaysiaguide-2016.pdf> , viewed on March 13, 2018.

43 PWC Worldwide Tax Summaries: Thailand

44 Deloitte International Tax: Brunei Darussalam Highlights 2017, < https://www2.deloitte.com/content/dam/Deloitte/cn/Documents/international-business-support/deloitte-cn-ibs-brunei-int-tax-en-2017.pdf>, viewed on March 20, 2018.

45 Oxford Business Group, "Useful tax updates for Businesses in Brunei Darussalam". Source: <https://oxfordbusinessgroup.com/overview/refining-system-useful-tax-updates-businesses>, viewed on April 16, 2018.

On the other hand, for existing companies the applicable tax is 25% of the 18.5% CIT rate for the first BN$100,000 (PhP3.9 million) and 50% of the 18.5% CIT for the next BN$150,000 (PhP5.9 million) of chargeable income. In excess of BN$150,000, the standard rate of 18.5% is applied. The graduated tax rates are summarized below.

Tax Base	Peso Equivalent	Tax Rate	
		New Companies	Existing Companies
First BN$100,000 of chargeable income	First PhP 3,900,000	Exempt	25% of 18.5%
Next BN$150,000 of chargeable income	Next PhP 5,900,000	50% of 18.5%	50% of 18.5%
In excess of BN$150,000	In Excess of PhP5,900,000	18.5%	18.5%

D.2. Cambodia

In 2016, under the Law on Financial Management 2016 (Royal Kram No. NS/RK/1215/016) corporate taxpayers were classified into three categories, i.e., small, medium and large taxpayers.

Under the MoEF No. 1819 MEF.P. or the guidelines issued by the Ministry of Economy and Finance in Cambodia, the classification of taxpayers are as follows:

Category	Criteria
Small Taxpayers	Small taxpayers are Sole Proprietorships or Partnerships who: ▪ Have annual taxable turnover from Khmer Riel ("KHR") 250 million (PhP3.2 million) to KHR700 million (PhP9.1 million); ▪ Have taxable turnover, in any period of three consecutive calendar months (within this tax year), exceeding KHR 60 million (PhP776,623); ▪ Expected taxable turnover of KHR 60 million (PhP776,623) or more in the next three consecutive months; ▪ Participate in any bidding, quotation or survey for the supply of goods and services including duties.
Medium Taxpayers	▪ Enterprises that have annual turnover from KHR700 million (PhP9.1 million) to KHR2,000 million (PhP 25.9 million); ▪ Enterprises that have been incorporated as legal entities; ▪ Sub-national government institutions, associations, and non-governmental organizations
Large Taxpayers	▪ Enterprises that have annual turnover over KHR2,000 million (PhP 25.9 million); ▪ Branch of a foreign companies; ▪ Enterprises registered as a QIP as approved by the Council for the Development of Cambodia; ▪ Government Institutions, foreign diplomatic and consular missions, international organizations and agencies.

The standard corporate income tax rate previously known as "tax on profit" in Cambodia for medium and large corporations and permanent establishments (PE) is at 20% of the net profit. Small taxpayers, on the other hand, are subject to a progressive rate of 0% - 20%. There are industries however, that are subject to specific tax treatment. For one, oil and gas and certain mineral exploitation activities, including timber, ore, gold and precious stones are subject to a CIT rate of 30%. Likewise, insurance companies are taxable at the rate of 5% on the gross premium income and at the rate of 20% on other income derived from non-insurance/reinsurance activities. Qualified investment projects (QIPs) are subject to a zero percent (0%) rate during the tax exemption period[46].

D.3. Lao PDR

Lao PDR imposes a profit tax at the rate of 24% of the net profit. The 24% rate is applied to both domestic and foreign enterprises that hold legal entities, except companies that are registered at the stock market which are granted a profit tax reduction of 5% from normal rate for a period of four years from the date of the registration at the stock market. After such period they will be subject to the normal rate of 24%. Those companies that produce, import and supply tobacco, however, are subject to a 26% profit tax rate[47]. Moreover, small and medium-sized enterprises that are not registered under the VAT system are subject to a lump sum tax at progressive rates between three percent (3%) and seven percent (7%) depending on the nature of the business and its revenue, instead of a profit tax or the CIT. This applies to enterprises which have annual revenue of less than LAK12 million[48] (PhP75,550).

D.4. Malaysia

The standard corporate income tax rate in Malaysia is 24% of the chargeable income which is the net taxable income. However, resident small and medium-sized enterprises, i.e., companies with paid-up capital of MYR 2.5 million (PhP33.5 million) or less, are subject to an 18% rate of the first MYR 500,000 (PhP6.7 million) with the balance being taxed at the rate of 24%. For the taxable year 2017 and 2018, companies are eligible for a reduction of between 1% and 4% on the standard tax rate for a portion of their income if there is an increase of 5% or more in the company's chargeable income, compared to the immediately preceding year of assessment. The

[46] PWC Worldwide Tax Summaries: Cambodia.
Source: < http://taxsummaries.pwc.com/ID/Cambodia-Corporate-Taxes-on-corporate-income>, viewed on March 9, 2018.

[47] Source: <http://www.tax.gov.la/Eng_WebPages/ProfitTax.aspx>, viewed on March 20, 2018.

[48] KPMG Laos Tax Profile.
Source: < https://home.kpmg.com/content/dam/kpmg/pdf/2016/08/country-tax-profile-laos.pdf >, viewed on April 2, 2018.

reduction of the tax rate, however, will only apply to the portion of the chargeable income representing the increase[49].

D.5. Myanmar

The standard corporate income tax rate in Myanmar is 25%. A two percent (2%) advance corporate income tax is levied on the import and export of goods. This tax is creditable against the corporate income tax liability of a Myanmar entity at the end of the year.

In 2017, Myanmar passed the Union Taxation Law 2017, which introduced changes in income tax regime, among others, effective April 1, 2017. Under this Law, the Ministry of Planning and Finance is authorized to grant exemption and relief to domestic and foreign organizations/corporations that operate on the basis of donated money or to public companies listed on the Yangon Stock Exchange, for information technology-related matters[50].

D.6. Singapore

Singapore is considered as one of the tax havens in ASEAN for having the lowest CIT rate of 17% of chargeable income regardless of whether it is local or foreign company.

Apart from having the lowest CIT rate, Singapore likewise offers tax exemption and tax rebate on corporate tax payments. Companies in Singapore are entitled to partial exemption of up to SGD 152,500 (PhP6 million) out of the first SGD 300,000 (PhP11.9 million) of the taxable income, hence:

Chargeable Income	Peso Equivalent	% Exempted From Tax	Amount Exempted from Tax	Peso Equivalent
First SGD 10,000	First PhP395,230	75%	SGD 7,500	PhP 296,362
Next SGD 290,000	Next PhP11,459,649	50%	SGD 145,000	PhP5,731,680
Total SGD of 300,000	**PhP11,854,495**	-	**SGD 152,000**	**PhP6,008,328**

[49] Deloitte. <https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-malaysiahighlights-2017.pdf>, viewed on March 20, 2018.

[50] PWC Myanmar Taxation Updates 2017.
Source: < http://download.pwc.com/mm/gobig/pdf/tax-updates_may2017.pdf >, viewed on April 2, 2018.

On the other hand, start-up companies are given full exemption on the first SGD100,000 and a further exemption of 50% on the next SGD200,000, hence, a maximum exemption of SGD200,000. This tax exemption may be availed of only for the first three (3) years after the commencement of business, and afterwards they shall be subject to partial exemption discussed in the immediately preceding paragraph.

Another unique feature of the Singaporean corporate tax system is the grant of corporate tax rebate. Corporate income tax rebate is given to all companies to help them with rising business costs and is applicable for year of assessment (YA) 2013 to YA 2018. For YA 2017 (income year 2016), there was a 50% corporate tax rebate. This rebate is capped at SGD 25,000 (PhP987,814). For YA 2018 (income year 2017), there is also a corporate tax rebate, but at a lower rate of 20%. This rebate is capped at SGD 10,000 (PhP395,230). The rebate will not apply to income derived by a non-resident company that is subject to final withholding tax and will be computed on the tax payable after deducting the tax set-offs (e.g. foreign tax credit)[51].

D.7. Thailand

The standard corporate tax rate for corporations in Thailand is at 20% of the net profit. However, companies with low paid-in capital and income, i.e., paid-in capital not exceeding THB 5 million (PhP8.3 million) and income of not exceeding THB 30 million (PhP49.9 million) from the sale of goods and/or services will be subject to tax under the following schedule:

Net Profit (THB)	Peso Equivalent (PhP)	Tax Rate (%)
THB 0 – 300,000	PhP 0 - 498,502	0
THB 300,001 – 3 million	Over PhP 498,502 - 4,985,768	15
Over THB 3 million	Over PhP 4,985,768	20

D.8. Vietnam

The standard corporate income tax (CIT) rate in Vietnam is 20% of the taxable profit. However, enterprises operating in the oil and gas industry are subject to CIT rates ranging from 32% to 50%, depending on the location and specific project conditions. Enterprises engaged in prospecting, exploration, and exploitation of mineral resources (e.g. silver, gold, gemstones) are subject to CIT rates of 40% or 50%, depending on the project's location. Preferential CIT rates of 10%, 15%, and 17% are available to specified industries under certain conditions.

[51] Inland Revenue Authority of Singapore Website.
Source: <https://www.iras.gov.sg/irashome/Businesses/Companies/Learning-the-basics-of-Corporate-Income-Tax/Common-Tax-Reliefs-That-Help-Reduce-The-Tax-Bills/>, viewed on March 20, 2018.

VI. PROPOSED REFORMS ON THE CIT SYSTEM IN THE PHILIPPINES

As part of Package 2 of the CTRP, the Congress is now working on possible reforms in the CIT system to make the Philippines competitive with other ASEAN countries and with the view of attracting foreign investors in the Philippines. The general trend of the reforms now pending in both houses of Congress involves the lowering of the CIT rate and the rationalization of fiscal incentives. However, the bills vary on the proposed rate and the manner of slashing the rate, i.e., gradual or outright reduction of the CIT rate and/or with conditions. There is also a proposal in Congress which restructures the CIT rate by imposing a graduated schedule similar to that of the individual taxpayers. *(**Annex A**)*

At present there are 18 bills proposing for the reduction of the CIT rate, among others, six (6) of which are filed in the Senate while 12 of the bills are filed in the House of Representatives. Eight (8) bills propose to lower the CIT rate outright to 25%, i.e., Senate Bill No. (SB) 125 (Sen. Zubiri), SB 698 (Sen. Aquino), and SB 1109 (Sen. Pimentel); House Bill No. (HB) 35 (Rep. Del Mar), HB 2427 (Rep. Javier), HB 3360 (Rep. Garin), HB 3835 (Rep. M. Zubiri), HB 5384 (Rep. Villafuerte). Meanwhile eight (8) bills propose to gradually lower the CIT rate, i.e., SB 317 (Sen. Angara), and SB 1204 (Sen. Binay); HB 36 (Rep. Yap), HB 137 (Rep. Noel), HB 295 (Reps. H. and E. Suansing), HB 1537 (Rep Herrera-Dy), HB 1653 (Rep. Angara Castillo), and HB 7458 (Reps. Cua, Gonzales, and Abu). Further, two (2) bills propose to adopt a graduated CIT schedule similar to individuals, i.e. SB 267 (Sen. Recto) and HB 1590 (Rep. Santos-Recto).

It bears stressing, however, that the proposed reduction of the CIT rate likewise necessitates a review of the other provisions of the NIRC of 1997, as amended, to wit:

a. *Section 28(B)(5)(b) of the NIRC of 1997, as amended, on the rate of credit against the tax due of non-resident foreign corporation's taxes deemed to have been paid in the Philippines.* - The said rate of credit is the difference between the CIT rate and the 15% tax on dividends. Under the current rate, only 15% is imposed on the amount of cash and/or property dividends from a domestic corporation, subject to the condition that the country in which the nonresident foreign corporation is domiciled, shall allow a credit against the tax due from the nonresident foreign corporation taxes deemed to have been paid in the Philippines equivalent to fifteen percent (15%).

b. *Section 34(B)(1) of the NIRC of 1997, as amended pertaining to the interest expense limitation.* - Presently at 30% CIT, the amount of interest paid or incurred within the taxable year allowed as deduction from gross income is reduced by thirty-three percent (33%) of the interest income subject to the final tax. This limitation in the deductibility of interest expense was legislated specifically to address the tax arbitrage arising from the difference between the 20% final tax on interest income and the regular CIT rate.

Likewise, a review of the preferential tax rates and CIT exemption under special laws is needed to broaden the tax base, improve CIT's revenue productivity, and make the corporate taxation simpler, fairer and more efficient.

VII. CONCLUSION AND RECOMMENDATIONS

The Philippines' CIT system is characterized by high rate and narrow tax base making it an outlier in the ASEAN region. A reduction of the CIT rate will make the country at par with other ASEAN member-countries in the light of the ASEAN economic integration. This will put the Philippines in good position to take advantage of the potential rise in foreign investment opportunities. It should be noted, however, that other than taxes, there are other factors such as good governance, infrastructure, reliability and enforceability of laws and contracts, market size, availability of necessary manpower, ease of doing business among others, that investors consider before putting up a business or investment in a particular country. Hence, while reforming our tax system will boost the country's competitiveness with neighboring countries, the Philippines should likewise put up the necessary infrastructures and developments to cope with the competition.

Lowering of the CIT rate will result in substantial revenue loss that may jeopardize or put at risk economic growth or reverse whatever gains the Philippines has achieved so far in terms of macroeconomic stability. Hence, for revenue considerations, in the event that lowering of CIT is considered, a staggered reduction of the CIT rate is deemed more judicious than outright reduction to cushion the impact of the proposal on government coffer. It is also worthwhile to consider putting a trigger or condition to the reduction so as not to unduly affect the government's basic financial metrics and cash flow.

Annex A. COMPARATIVE FEATURES OF VARIOUS PROPOSALS ON THE CORPORATE INCOME TAX UNDER THE 17TH CONGRESS

A. Senate Bills

<table>
<tr><th>Senate Bill (SB) No./Title/Author</th><th>Proposed CIT Rate</th><th>Other Relevant Feature/s:</th></tr>
<tr><td>SB 125 - An Act Reducing the Corporate Income Tax Rate, Amending Sections 27 and 28 of the National Internal Revenue Code of 1997, As Amended, And for Other Purposes
(Sen. Juan Miguel F. Zubiri)</td><td>Proposes an outright reduction of the CIT rate for domestic and foreign corporations from 30% to 25% beginning January 1, 2018</td><td>▪ Adjusts the rate of credit against the tax due of non-resident foreign corporation to 10%.</td></tr>
<tr><td>SB 267 – An Act Instituting Income Tax Reform for Individual and Corporate Taxpayers, Amending for this Purpose Sections 24(A)(2), 27(A) and 35(A) of the National Internal Revenue Code of 1997, As Amended, and for other Purposes
(Sen. Ralph G. Recto)</td><td>Proposes to impose a graduated schedule for domestic corporations, as follows:
<table><tr><th>Taxable Income</th><th>Tax Due is:</th></tr><tr><td>Not over PhP300,000</td><td>5%</td></tr><tr><td>Over PhP300,000 but not over PhP600,000</td><td>PhP15,000 + 10% of the excess over PhP300,000</td></tr><tr><td>Over PhP600,000 but not over PhP900,000</td><td>PhP45,000 + 15% of the excess over PhP600,000</td></tr><tr><td>Over PhP900,000 but not over PhP1,200,000</td><td>PhP90,000 + 20% of the excess over PhP900,000</td></tr><tr><td>Over PhP1,200,000</td><td>PhP150,000 + 25% of the excess over PhP1,200,000</td></tr></table></td><td>▪ Authorizes the President of the Philippines to adjust every six (6) years thereafter the taxable income levels and nominal tax rates to its present value using the consumer price index (CPI), as published by the Philippine Statistics Authority (PSA);</td></tr>
<tr><td>SB 317 - An Act Reducing the Corporate Income Tax Rate, Amending Sections 27 and 28 of the National Internal Revenue Code of 1997, As Amended, and for Other Purposes
(Sen. Sonny Angara)</td><td>Gradual reduction of the CIT rate for domestic and foreign corporations, as follows:

29% beginning January 1, 2017;
27% beginning January 1, 2018; and
25% beginning January 1, 2019 and thereafter</td><td>▪ Adjusts the rate of credit against the tax due of non-resident foreign corporation as follows:

14% at 29% CIT by 2017;
12% at 27% CIT by 2018; and
10% at 25% CIT by 2019.</td></tr>
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