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SENATE

RECEIVED BY: *Atilla*

S. No. 513

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INTRODUCED BY HON. MANUEL B. VILLAR, JR.

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### EXPLANATORY NOTE

Developing countries in need of foreign capital to pump up their economies often dangle attractive incentives to potential investors in order to lure them into establishing businesses in their respective areas.

One such incentive is the tax holiday, which is an exemption granted by the National Government from the imposition of corporate income tax on registered pioneer or non-pioneer enterprises for a certain period of time adequate enough for them to obtain a return of their investments.

This grace period is commonly called the "incubation period" and is widely observed in other countries, such as Taiwan, Malaysia, Malta, Zimbabwe, St. Kitts and Nevis, to name a few.

All things being equal, the preference of investors is likely to hinge on the incentive packages being offered by host countries. Some countries give longer tax holidays than the others: Taiwan offers six (12) years; St. Kitts and Nevis, fifteen (15) years; Malta, ten (10) years.


The Philippines allows a maximum of six (6) years for pioneer firms and four (4) years for non-pioneer firms.

Most investors and export-oriented establishments observe that the periods are too short for them to attain a certain degree of financial stability and fear that the continued implementation of this policy will lead to the eventual closure of their businesses, especially in the face of the current Asian economic crisis.

We must, therefore, evaluate our policy on tax holidays and make the corresponding adjustments based on the present economic dynamics in the region with the end view of giving the Philippines a competitive edge in the Asian market.

This bill seeks to restructure the fiscal incentives regime of the country by increasing allowable tax holidays, rationalizing other incentive laws, and granting other benefits to investors.

Passage of this bill is earnestly sought.

  
MANUEL B. VILLAR, JR.

THIRTEENTH CONGRESS OF THE  
REPUBLIC OF THE PHILIPPINES  
*First Regular Session*

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RECEIVED BY: *Adu*

SENATE

S. No. 513

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**AN ACT RESTRUCTURING THE FISCAL INCENTIVES UNDER EXECUTIVE ORDER NO. 226, OTHERWISE KNOWN AS THE OMNIBUS INVESTMENTS CODE OF 1987, AS AMENDED, AMENDING PERTINENT ARTICLES OF THE CODE, PROVIDING FOR PENALTIES IN VIOLATION THEREOF, AND FOR OTHER PURPOSES**

*Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:*

SECTION 1. Article 23, Title I of Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, as amended, is hereby further amended to read as follows:

“Art. 23. ‘Export sales’ shall mean the Philippine port F.O.B. value, determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, of export products exported directly by a registered export producer, or the net selling price of export products sold by a registered export producer to another export producer, or to an export trader that subsequently exports the same: *Provided*, That sales of export products to another producer or to an export trader shall be deemed export sales when actually exported by the latter, as evidenced by landing certificates or similar commercial documents: *Provided, further*, That without actual exportation the following shall be considered constructively exported for purposes of this provision: (1) sales to bonded manufacturing warehouses of export-oriented manufacturers; (2) sales to export processing zones; (3) sales to registered export traders operating bonded trading warehouses supplying raw materials used in the manufacture of export products under guidelines to be set by the Board in consultation with the Bureau of Internal Revenue and the Bureau of Customs; (4) **SALES BY MANUFACTURERS LOCATED IN ANY SPECIAL ECONOMIC ZONE TO BOI-REGISTERED EXPORT PRODUCERS OF ANY SUPPLIES, RAW MATERIALS AND SEMI-MANUFACTURED PRODUCTS ACTUALLY PRODUCED BY THE FORMER, AND USED IN THE MANUFACTURE, PROCESSING OR PRODUCTION OF THE LATTER’S EXPORT PRODUCTS, UNDER GUIDELINES TO BE SET BY THE**

**BOARD IN CONSULTATION WITH THE BUREAU OF INTERNAL REVENUE AND THE BUREAU OF CUSTOMS;** [(4)] (5) sales to foreign military bases, diplomatic missions and other agencies and/or instrumentalities granted tax immunities, of locally manufactured, assembled or repacked products whether paid for in foreign currency or not: *Provided, further,* That export sales of registered export traders may include commission income, and: *Provided, finally,* That exportation of goods on consignment shall not be deemed export sales until the export products consigned are in fact sold by the consignee.

Sales of locally manufactured or assembled goods for household and personal use to Filipinos abroad and other non-residents of the Philippines as well as returning Overseas Filipinos under the Internal Export program of the government and paid for in convertible foreign currency inwardly remitted through the Philippine banking systems shall also be considered as export sales.”

SEC. 2. Article 39, Title III of the Omnibus Investments Code of 1987, as amended, is hereby further amended to read as follows:

“ART. 39. *Incentives to Registered Enterprises.* – [All registered enterprises shall be granted the following incentives to the extent engaged in a preferred area of investment] **REGISTERED ENTERPRISES SHALL BE GRANTED ANY OF THE FOLLOWING INCENTIVES AS MAY BE DEEMED NECESSARY BY THE BOARD IN THE CONTEXT OF THE INVESTMENTS PRIORITIES PLAN (IPP):**

(a) *Income Tax Holiday.* –

(1) For six (6) years from commercial operation for pioneer firms and four (4) years for non-pioneer firms, new registered firms shall be fully exempt from income taxes levied by the national government. Subject to such guidelines as may be prescribed by the Board, the income tax exemption will be extended for another year in each of the following cases:

(i) the project meets the prescribed ratio of capital equipment to number of workers set by the Board;

(ii) utilization of indigenous raw materials at rates set by the Board;

(iii) the net foreign exchange savings or earnings amount to at least Five hundred thousand US dollars (US \$500,000.00) annually during the first three (3) years of operation.

The preceding paragraph notwithstanding, no registered pioneer firm may avail of this incentive for a period exceeding eight (8) years: **PROVIDED, HOWEVER, THAT A NEW REGISTERED PIONEER ENTERPRISE MAY BE GRANTED A MAXIMUM OF TWELVE (12) YEARS INCOME TAX HOLIDAY FROM COMMERCIAL OPERATION SUBJECT TO THE APPROVAL OF THE SECRETARY OF FINANCE, AND**

**COMPLIANCE BY THE REGISTERED PIONEER ENTERPRISE, WITH ALL OF THE FOLLOWING CONDITIONS:**

**(A) THE PROJECT WILL REQUIRE A NEW INVESTMENT OF AT LEAST TWENTY-FIVE MILLION US DOLLARS (US \$25,000,000.00).**

**(B) THE PROJECT WILL MANUFACTURE PRODUCTS THAT ARE DISTINCTLY AND COMPLETELY NEW IN THE PHILIPPINES AND WILL EXPORT AT LEAST SEVENTY PERCENT (70%) OF TOTAL PRODUCTION OR WHICH ARE ESSENTIAL RAW+ MATERIALS, PARTS AND/OR COMPONENTS OF THE COUNTRY'S SIGNIFICANT EXPORTS: *PROVIDED, HOWEVER,* THAT THIS CONDITION WILL NOT APPLY IF THE PROJECT WILL LOCATE OUTSIDE METRO MANILA.**

***PROVIDED, FINALLY,* THAT A NEW REGISTERED ENTERPRISE ENGAGED IN INFORMATION TECHNOLOGY AND INFORMATION TECHNOLOGY-RELATED PROJECTS MAY BE GRANTED A MAXIMUM TWELVE (12) YEARS INCOME TAX HOLIDAY WITHOUT SECURING PRIOR APPROVAL FROM THE DEPARTMENT OF FINANCE AND COMPLIANCE WITH THE FOREGOING CONDITIONS.**

**(2) For a period of three (3) years from commercial operation, registered expanding firms shall be entitled to an exemption from income taxes levied by the national government proportionate to their expansion under such terms and conditions as the Board may determine: [*Provided, however,* That during the period within which this incentive is availed of by the expanding firm it shall not be entitled to additional deduction for incremental labor expense.]**

**[(3) The provision of Article 7 (14) notwithstanding, registered firms shall not be entitled to any extension of this incentive.]**

**(3) FIRMS AVAILING OF THE INCOME TAX HOLIDAY AS HEREIN PROVIDED SHALL NOT BE ENTITLED TO AVAIL OF THE INCENTIVES OF ACCELERATED DEPRECIATION, AND INVESTMENT TAX ALLOWANCE AS PROVIDED IN SUB-PARAGRAPHS (O) AND (R) HEREOF, RESPECTIVELY.**

**[(b) *Additional Deduction for Labor Expense.* – For the first five (5) years from registration a registered enterprise shall be allowed an additional deduction from the taxable income of fifty percent (50%) of the wages corresponding to the increment in the number of direct labor for skilled and unskilled workers if the project meets the prescribed ratio of capital equipment to number of workers set by the Board: *Provided,* That this additional deduction shall be doubled if the activity is located in less developed areas as defined in Art. 40.]**

**(B) *NET OPERATING LOSS CARRY OVER (NOLCO).* – THE PROVISIONS OF ANY LAW TO THE CONTRARY NOTWITHSTANDING, THE NET OPERATING LOSS OF THE BUSINESS OR ENTERPRISE INCURRED DURING THE PERIOD OF ITS INCOME TAX HOLIDAY INCENTIVE WHICH HAD NOT BEEN PREVIOUSLY OFFSET AS DEDUCTION FROM GROSS INCOME SHALL BE CARRIED OVER AS A**

**DEDUCTION FROM GROSS INCOME FOR THE NEXT FIVE (5) CONSECUTIVE TAXABLE YEARS IMMEDIATELY FOLLOWING THE LAST YEAR OF THE FIRM'S INCOME TAX HOLIDAY AVAILMENT PERIOD: PROVIDED, HOWEVER, THAT OPERATING LOSSES INCURRED DUE TO AVAILMENT OF INCENTIVES THAT ARE DEDUCTIBLE FROM TAXABLE INCOME SUCH AS ACCELERATED DEPRECIATION, DOUBLE DEDUCTION FOR TRAINING AND RESEARCH AND DEVELOPMENT EXPENDITURES AND INVESTMENT TAX ALLOWANCE, AMONG OTHERS, SHALL NOT BE ENTITLED TO NOLCO.**

[(c) *Tax and Duty Exemption on Imported Capital Equipment.* – Within five (5) years from the effectivity of this Code, importations of machinery and equipment and accompanying spare parts of new and expanding registered enterprises shall be exempt to the extent of one hundred percent (100%) of the customs duties and national internal revenue tax payable thereon: *Provided,* That the importation of machinery and equipment and accompanying spare parts shall comply with the following conditions:

- (1) They are not manufactured domestically in sufficient quantity, of comparable quality and at reasonable prices;
- (2) They are reasonably needed and will be used exclusively by the registered enterprise in the manufacture of its products, unless prior approval of the Board is secured for the part-time utilization of said equipment in a non-registered activity to maximize usage thereof or the proportionate taxes and duties are paid on the specific equipment and machinery being permanently used for non-registered activities; and
- (3) The approval of the Board was obtained by the registered enterprise for the importation of such machinery, equipment and spare parts.

In granting the approval of the importations under this paragraph, the Board may require international canvassing but if the total cost of the capital equipment or industrial plant exceeds Five million US dollars (US \$5,000,000.00), the Board shall apply or adopt the provisions of Presidential Decree Numbered 1764 on International Competitive Bidding.

If the registered enterprise sells, transfers or disposes of these machinery, equipment and spare parts without prior approval of the Board within five (5) years from date of acquisition, the registered enterprise and the vendee, transferee, or assignee shall be solidarily liable to pay twice the amount of the tax exemption given it.

The Board shall allow and approve the sale, transfer or disposition of the said items within the said period of five (5) years if made:

- (aa) to another registered enterprise or registered domestic producer enjoying similar incentives;
- (bb) for reasons of proven technical obsolescence; or
- (cc) for purposes of replacement to improve and/or expand the operations of the registered enterprise.]

**(C) TAX AND DUTY EXEMPTION ON IMPORTED CAPITAL EQUIPMENT. – IMPORTATIONS OF CAPITAL EQUIPMENT, SPARE PARTS AND PRODUCTION CONSUMABLES AND THOSE REQUIRED FOR POLLUTION ABATEMENT AND CONTROL BY NEW, EXPANDING AND/OR MODERNIZING REGISTERED ENTERPRISE UPON THE EFFECTIVITY OF THIS ACT SHALL BE EXEMPT TO THE EXTENT OF ONE HUNDRED PERCENT (100%) OF THE TAXES AND CUSTOMS DUTIES DUE THEREON: PROVIDED, THAT THE IMPORTATION THEREOF SHALL BE USED EXCLUSIVELY BY THE REGISTERED ENTERPRISE IN ITS REGISTERED ACTIVITY.**

**THE BOARD SHALL ALLOW AND APPROVE THE SALE, TRANSFER OR DISPOSITION OF THE SAID ITEMS WITHIN THE FIRST FIVE (5) YEARS FROM DATE OF IMPORTATION SUBJECT TO ANY OF THE FOLLOWING CONDITIONS:**

**(AA) IF MADE TO ANOTHER ENTERPRISE ENJOYING TAX AND DUTY EXEMPTION ON IMPORTED CAPITAL EQUIPMENT;**

**(BB) IF MADE TO ANY OTHER DOMESTIC ENTERPRISE, UPON PAYMENT OF ANY TAXES AND DUTIES DUE ON THE UNDEPRECIATED PORTION OF THE EQUIPMENT, MACHINERY OR SPARE PARTS BASED ON A NORMAL RATE OF DEPRECIATION; OR**

**(CC) EXPORTATION OF THE EQUIPMENT, MACHINERY OR SPARE PARTS. PROVIDED, THAT, IF THE REGISTERED ENTERPRISE SELLS, TRANSFERS OR DISPOSES OF THESE MACHINERY, EQUIPMENT AND SPARE PARTS WITHOUT PRIOR APPROVAL OF THE BOARD WITHIN FIVE (5) YEARS FROM DATE OF IMPORTATION, THE REGISTERED ENTERPRISE AND THE VENDEE, TRANSFEREE, OR ASSIGNEE SHALL BE SOLIDARILY LIABLE TO PAY TWICE THE AMOUNT OF THE CUSTOMS DUTY AND THE INTERNAL REVENUE TAX DUE ON SUCH IMPORTATION.**

**[(d) Tax Credit on Domestic Capital Equipment. – A tax credit equivalent to one hundred percent (100%) of the value of the national internal revenue taxes and customs duties that would have been waived on the machinery, equipment and spare parts, had these items been imported shall be given to the new and expanding registered enterprise which purchases machinery, equipment and spare parts from a domestic manufacturer: Provided, (1) That the said equipment, machinery and spare parts are reasonably needed and will be used exclusively by the registered enterprise in the manufacture of its products, unless prior approval of the Board is secured for the part-time utilization of said equipment in a non-registered activity to maximize usage thereof; (2) that the equipment would have qualified for tax and duty-free importation under paragraph (c) hereof; (3) that the approval of the Board was obtained by the registered enterprise; and (4) that the purchase is made within five (5) years from the date of effectivity of**

the Code. If the registered enterprise sells, transfers or disposes of these machinery, equipment and spare parts, the provisions in the preceding paragraph for such disposition shall apply.]

**(D) TAX CREDIT ON THE PURCHASED COMPONENT OF LOCALLY-PRODUCED EQUIPMENT.** – A TAX CREDIT EQUIVALENT TO TAXES AND/OR DUTIES PAID ON RAW MATERIALS, SUPPLIES, PARTS AND SEMI-FINISHED PRODUCTS USED IN THE FABRICATION OF THE MACHINERY AND EQUIPMENT SHALL BE GIVEN TO REGISTERED ENTERPRISES WHICH PURCHASE MACHINERY AND EQUIPMENT FROM A DOMESTIC MANUFACTURER: *PROVIDED*, (1) THAT SAID EQUIPMENT, MACHINERY AND SPARE PARTS WILL BE USED EXCLUSIVELY BY THE REGISTERED ENTERPRISE IN ITS REGISTERED ACTIVITY; (2) THAT THE EQUIPMENT WOULD HAVE QUALIFIED FOR TAX AND DUTY-FREE IMPORTATION UNDER PARAGRAPH (C); (3) THAT THE VALUE-ADDED TAX THAT HAS BEEN PAID AND REFUNDED TO OR FOR WHICH TAX CREDIT HAS ALREADY BEEN ISSUED TO THE MANUFACTURER OF THE EQUIPMENT OR MACHINERY FOR SUCH RAW MATERIALS, SUPPLIES, SPARE PARTS OR SEMI-FINISHED PRODUCTS, SHALL NO LONGER BE AVAILABLE FOR THE ISSUANCE OF TAX CREDIT TO THE REGISTERED ENTERPRISE WHO PURCHASED THE EQUIPMENT; AND (4) THAT THE APPROVAL OF THE BOARD IS OBTAINED BY THE REGISTERED ENTERPRISE. IF THE REGISTERED ENTERPRISE SELLS, TRANSFERS, OR DISPOSES OF THESE MACHINERY, EQUIPMENT AND SPARE PARTS, THE PROVISION IN THE PRECEDING PARAGRAPH FOR SUCH DISPOSITION SHALL APPLY.

*[(e) Exemption from Contractor's Tax.* – The registered enterprise shall be exempt from the payment of contractor's tax, whether national or local.]

**(E) DEFERRED IMPOSITION OF TWO PERCENT (2%) MINIMUM CORPORATE INCOME TAX (MCIT)** – A MINIMUM CORPORATE INCOME TAX (MCIT) OF TWO PERCENT (2%) OF THE GROSS INCOME AS OF THE END OF THE TAXABLE YEAR SHALL BE IMPOSED WHEN THE MINIMUM INCOME TAX IS GREATER THAN THE TAX COMPUTED UNDER SECTION 27, SUBSECTION (A) OF REPUBLIC ACT NO. 8424 OR THE TAX REFORM ACT OF 1997 FOR THE TAXABLE YEAR: *PROVIDED, HOWEVER*, THAT SAID MCIT SHALL BE IMPOSED ONLY AFTER THE FIRM'S ENTITLEMENT PERIOD TO THE INCOME TAX HOLIDAY OR NET OPERATING LOSS CARRY-OVER, WHICHEVER IS APPLICABLE.

*(f) Simplification of Customs Procedures.* – Customs procedures for the importation of equipment, spare parts, raw materials and supplies, and exports of processed products by registered enterprises shall be simplified by the Bureau of Customs.

(g) *Unrestricted Use of Consigned Equipment.* – Provisions of existing laws notwithstanding, machinery, equipment and spare parts consigned to any registered enterprise shall not be subject to restrictions as to period of use of such machinery, equipment and spare parts: *Provided*, That the appropriate re-export bond is posted unless importation is otherwise covered under subsections (c) and (m) of this Article: *Provided, further*, That such consigned equipment shall be for the exclusive use of the registered enterprise.

If such equipment is sold, transferred or otherwise disposed of by the registered enterprise the related provision of Article 39 (c) [3] shall apply. Outward remittance of foreign exchange covering the proceeds of such sale, transfer or disposition shall be allowed only upon prior Bangko Sentral ng Pilipinas approval.

(h) *Employment of Foreign Nationals.* – Subject to the provisions of Section 29 of Commonwealth Act Numbered 613, as amended, a registered enterprise may employ foreign nationals in supervisory, technical or advisory positions for a period not exceeding five (5) years from its registration, extendible for limited periods at the discretion of the Board: *Provided, however*, That when the majority of the capital stock of a registered enterprise is owned by foreign investors, the positions of president, treasurer and general manager or their equivalents may be retained by foreign nationals beyond the period set forth herein.

Foreign nationals under employment contract within the purview of this incentive, their spouses and unmarried children under twenty-one (21) years of age, who are not excluded by Section 29 of Commonwealth Act Numbered 613, as amended, shall be permitted to enter and reside in the Philippines during the period of employment of such foreign nationals.

A registered enterprise shall train Filipinos as understudies of foreign nationals in administrative, supervisory and technical skills and shall submit annual reports on such training to the Board.

[(i) *Exemption on Breeding Stocks and Genetic Materials.* – The importation of breeding stocks and genetic materials within ten (10) years from the date of registration or commercial operation of the enterprise shall be exempt from all taxes and duties: *Provided*, That such breeding stocks and genetic materials are (1) not locally available and/or obtainable locally in comparable quality and at reasonable prices; (2) reasonably needed in the registered activity; and (3) approved by the Board.]

**(I) TAX AND DUTY EXEMPTION ON BREEDING STOCKS AND GENETIC MATERIALS. – THE IMPORTATION OF BREEDING STOCKS AND GENETIC MATERIALS WITHIN TEN (10) YEARS FROM THE DATE OF REGISTRATION OR COMMERCIAL OPERATION OF THE ENTERPRISE SHALL BE EXEMPT FROM ALL TAXES AND DUTIES: PROVIDED, THAT SUCH BREEDING STOCKS AND GENETIC MATERIALS ARE EXCLUSIVELY USED IN THE REGISTERED ACTIVITY AND APPROVED BY THE BOARD.**

[(j) *Tax Credit on Domestic Breeding Stocks and Genetic Materials.* – A tax credit equivalent to one hundred percent (100%) of the value of national internal revenue taxes and



customs duties that would have been waived on the breeding stocks and genetic materials had these items been imported shall be given to the registered enterprise which purchases breeding stock and genetic materials from a domestic producer: *Provided*, (1) That said breeding stocks and genetic materials would have qualified for tax and duty free importation under the preceding paragraph; (2) that the breeding stocks and genetic materials are reasonably needed in the registered activity; (3) that approval of the Board has been obtained by the registered enterprise; and (4) that the purchase is made within ten (10) years from date of registration or commercial operation of the registered enterprise.]

**(J) TAX CREDIT FOR USE OF DOMESTIC STOCKS AND GENETIC MATERIALS.**  
– A TAX CREDIT EQUIVALENT TO ONE HUNDRED PERCENT (100%) OF THE TAXES AND DUTIES THAT WOULD HAVE BEEN WAIVED ON THE DOMESTIC BREEDING STOCKS AND GENETIC MATERIALS HAD THESE ITEMS BEEN IMPORTED SHALL BE GIVEN TO REGISTERED FIRMS WHICH PURCHASE BREEDING STOCKS AND GENETIC MATERIALS FROM A DOMESTIC PRODUCER: *PROVIDED*, THAT (1) THE APPROVAL OF THE BOARD HAS BEEN OBTAINED BY THE REGISTERED ENTERPRISE; AND (2) THE PURCHASE IS MADE WITHIN TEN (10) YEARS FROM THE DATE OF REGISTRATION OR COMMERCIAL OPERATION OF THE REGISTERED ENTERPRISE.

[(k) *Tax Credit for Taxes and Duties on Raw Materials.* – Every registered enterprise shall enjoy a tax credit equivalent to the National Internal Revenue taxes and Customs duties paid on the supplies, raw materials and semi-manufactured products used in the manufacture, processing or production of its export products and forming part thereof; exported directly or indirectly by the registered enterprise: *Provided, however*, That the taxes on the supplies, raw materials and semi-manufactured products domestically purchased are indicated as a separate item in the sales invoice.

Nothing herein shall be construed as to preclude the Board from setting a fixed percentage of export sales as the approximate tax credit for taxes and duties of raw materials based on an average or standard usage for such materials in the industry.]

**(K) TAX CREDIT FOR TAXES AND DUTIES ON RAW MATERIALS/SUPPLIES.** – EVERY REGISTERED DIRECT OR INDIRECT EXPORT ENTERPRISE SHALL ENJOY A TAX CREDIT EQUIVALENT TO THE NATIONAL INTERNAL REVENUE TAXES AND CUSTOMS DUTIES PAID ON THE SUPPLIES, RAW MATERIALS AND SEMI-MANUFACTURED PRODUCTS USED IN THE MANUFACTURE, PROCESSING OR PRODUCTION OF ITS EXPORT PRODUCTS. ENTITLEMENT OF INDIRECT EXPORTERS TO TAX CREDIT SHALL BE SUBJECT TO SAFEGUARDS THAT WILL BE PROVIDED IN THE IMPLEMENTING RULES AND REGULATIONS FOR THIS ACT TO PREVENT THE ABUSE AND/OR FRAUDULENT AVAILMENT OF TAX CREDITS UNDER THIS PROVISION. THESE SAFEGUARDS SHALL

INCLUDE, AMONG OTHERS, A PROVISION THAT SAID TAX CREDITS IN THE CASE OF INDIRECT EXPORTERS SHALL BE APPLICABLE ONLY AGAINST INCOME TAX AND NOT AGAINST ANY OTHER TAX.

THE BOARD MAY SET A FIXED PERCENTAGE OF EXPORT SALES AS THE APPROXIMATE TAX CREDIT FOR TAXES AND DUTIES OF RAW MATERIALS BASED ON AN AVERAGE OR STANDARD USAGE FOR SUCH MATERIALS IN THE INDUSTRY.

[(l) *Access to Bonded Manufacturing/Trading Warehouse System.* – Registered export oriented enterprises shall have access to the utilization of the bonded warehousing system in all areas required by the project subject to such guidelines as may be issued by the Board upon prior consultation with the Bureau of Customs.]

**(L) ACCESS TO BONDED MANUFACTURING/TRADING WAREHOUSE. – REGISTERED EXPORT-ORIENTED ENTERPRISES SHALL HAVE ACCESS TO THE BONDED WAREHOUSING SYSTEM.**

(m) *Exemption from Taxes and Duties on Imported Spare Parts.* – Importation of required supplies and spare parts for consigned equipment or those imported tax and duty free by a registered enterprise with a bonded manufacturing warehouse shall be exempt from customs duties and national internal revenue taxes payable thereon: *Provided, however,* That at least seventy percent (70%) of production is exported: *Provided, further,* That such spare parts and supplies are not locally available at reasonable prices, sufficient quantity and comparable quality: *Provided, finally,* That all such spare parts and supplies shall be used only in the bonded manufacturing warehouse of the registered enterprise under such requirements as the Bureau of Customs may impose.

(n) *Exemption from Wharfage Dues and any Export Tax, Duty, Impost and Fee.* – The provisions of law to the contrary notwithstanding, exports by a registered enterprise of its non-traditional export products shall be exempted from any wharfage dues, and any export tax, duty impost and fee.

**(O) ACCELERATED DEPRECIATION. – FIXED ASSETS MAY BE DEPRECIATED AS FOLLOWS:**

**(1) TO THE EXTENT OF NOT MORE THAN TWICE AS FAST AS THE NORMAL RATE OF DEPRECIATION OR DEPRECIATED AT NORMAL RATE OF DEPRECIATION IF THE EXPECTED LIFE IS TEN (10) YEARS OR LESS; OR**

**(2) DEPRECIATED OVER ANY NUMBER OF YEARS BETWEEN FIVE (5) YEARS AND THE EXPECTED LIFE IF THE LATTER IS MORE THAN TEN (10) YEARS, AND THE DEPRECIATION THEREON ALLOWED AS DEDUCTION FROM TAXABLE INCOME: PROVIDED, THAT THE REGISTERED ENTERPRISE NOTIFIES THE BUREAU OF INTERNAL REVENUE AT THE BEGINNING OF THE DEPRECIATION PERIOD THAT THIS DEPRECIATION RATE SHALL BE USED.**

**(P) DOUBLE DEDUCTION FOR TRAINING EXPENDITURES.** – EXPENSES INCURRED FOR LOCAL TRAINING GIVEN TO EMPLOYEES FOR THE DEVELOPMENT OF SKILLS IDENTIFIED AS NECESSARY BY THE APPROPRIATE GOVERNMENT AGENCIES SHALL ENTITLE THE REGISTERED ENTERPRISE TO A SPECIAL DEDUCTION FROM TAXABLE INCOME EQUIVALENT TO ONE HUNDRED PERCENT (100%) OF THE TOTAL EXPENSES OVER AND ABOVE THE ALLOWABLE ORDINARY AND NECESSARY BUSINESS DEDUCTIONS FOR SAID EXPENSES UNDER THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED. THE INCENTIVE SHALL BE AVAILED OF BY REGISTERED FIRMS FOR A PERIOD OF TEN (10) YEARS FROM START OF COMMERCIAL OPERATION BUT SHOULD BE CLAIMED WITHIN FIVE (5) YEARS FROM THE DATE WHEN THE EXPENDITURE WAS MADE. AFTER THE TENTH YEAR, THE EXPENDITURE CAN BE CLAIMED AS A DEDUCTIBLE ITEM AS PROVIDED FOR UNDER REPUBLIC ACT NO. 8424.

**(Q) DOUBLE DEDUCTION FOR RESEARCH AND DEVELOPMENT.** – EXPENSES INCURRED FOR RESEARCH AND DEVELOPMENT RELATING TO THE BUSINESS SHALL ENTITLE THE REGISTERED ENTERPRISE TO A SPECIAL DEDUCTION FROM TAXABLE INCOME EQUIVALENT TO ONE HUNDRED PERCENT (100%) OF THE TOTAL EXPENSES OVER AND ABOVE THE ALLOWABLE ORDINARY AND NECESSARY BUSINESS DEDUCTIONS FOR SAID EXPENSES UNDER THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED. THE INCENTIVE SHALL BE AVAILED OF BY REGISTERED FIRMS FOR A PERIOD OF TEN (10) YEARS FROM START OF COMMERCIAL OPERATION BUT SHOULD BE CLAIMED WITHIN FIVE (5) YEARS FROM THE DATE WHEN THE EXPENDITURE WAS MADE. AFTER THE TENTH YEAR, THE EXPENDITURE CAN BE CLAIMED AS A DEDUCTIBLE ITEM AS PROVIDED FOR UNDER REPUBLIC ACT NO. 8424.

FOR PURPOSES OF THIS ACT, “RESEARCH AND DEVELOPMENT COST” MEANS RESEARCH AND EXPERIMENTAL EXPENDITURES SUCH AS COSTS INCIDENT TO THE DEVELOPMENT OR IMPROVEMENT OF A PRODUCT, INCLUDING PILOT MODEL, PROCESS, FORMULA, INVENTION, TECHNIQUE, PATENT OR SIMILAR PROPERTY (EXAMPLES: EXPENDITURES PAID OR INCURRED TO DISCOVER INFORMATION THAT ELIMINATES UNCERTAINTY AS TO THE DEVELOPMENT OR IMPROVEMENT OF A PRODUCT; THE DEPRECIATION ON SUCH PROPERTY USED FOR RESEARCH AND EXPERIMENTATION; FEES INCURRED TO OBTAIN PATENTS ON THE TAXPAYER’S INVENTIONS; LEGAL AND ACCOUNTING FEES PAID OR INCURRED INCIDENT TO RESEARCH AND DEVELOPMENT ACTIVITIES; EXPENSES INCURRED IN DEVELOPING THE CONCEPT OF A PRODUCT; OR OTHER SIMILAR ITEMS).

**(R) INVESTMENT TAX ALLOWANCE (ITA).** - AN INVESTMENT TAX ALLOWANCE TO THE EXTENT OF THE REGISTERED FIRM'S ACTUAL INVESTMENT IN FIXED ASSETS (EXCLUDING INVESTMENTS IN LAND AND CAPITAL EQUIPMENT FOR R&D) SHALL BE ALLOWED AS A DEDUCTION FROM FIFTY PERCENT (50%) OF ITS TAXABLE INCOME IN THE YEAR IN WHICH SUCH INVESTMENT WAS MADE: *PROVIDED*, (1) THAT THE INVESTMENT IS MADE WITHIN THREE (3) YEARS FROM THE DATE OF REGISTRATION; AND (2) THAT THE INVESTMENT IS REGISTERED WITH THE BOARD: *PROVIDED, FURTHER*, THAT DURING THE SAID THREE-YEAR PERIOD, REGISTERED FIRMS AVAILING OF THIS INCENTIVE SHALL NOT BE ALLOWED TO AVAIL OF ACCELERATED DEPRECIATION: *PROVIDED, FINALLY*, THAT THE REGISTERED ENTERPRISE SHALL CHARGE, AT THE MINIMUM, THE NORMAL RATE OF DEPRECIATION IN ANY YEAR WHEN THE ITA IS NOT BEING USED DURING THE SAID THREE (3) YEARS.

ANY UNUTILIZED ALLOWANCE AFTER SUCH THREE-YEAR PERIOD MAY BE CARRIED OVER FOR TWO (2) YEARS. EFFECTIVELY, THE INCENTIVE SHALL BE AVAILED OF FOR A TOTAL PERIOD OF FIVE (5) YEARS FROM DATE OF REGISTRATION. UPON FULL UTILIZATION OF THE ITA, THE NORMAL RATE OF DEPRECIATION SHALL APPLY. DEPRECIATION BY MORE THAN ONE HUNDRED PERCENT (100%) OF THE VALUE OF THE ASSETS SHALL NOT BE ALLOWED.

FURTHERMORE, REGISTERED ENTERPRISES SHALL ALSO BE ENTITLED TO THE FOLLOWING NON-FISCAL INCENTIVES:

- (1) ASSISTANCE IN THE PREPARATION OF INVESTMENT OPPORTUNITY STUDIES;
- (2) ASSISTANCE FOR JOINT VENTURE MATCHING;
- (3) ASSISTANCE IN SOURCING FINANCING SUPPORT;
- (4) PROMOTION OF INTRA-SECTOR LINKAGES THROUGH THE AVAILABILITY OF AN EXCHANGE AND ASSISTANCE FACILITY THAT IDENTIFIES SME SUPPORT COMPANIES OF A REGISTERED ENTERPRISE;
- (5) TECHNICAL ASSISTANCE THROUGH BOI'S REGULAR PROGRAMS;
- (6) BUSINESS CONSULTANCY SERVICES;
- (7) ENTREPRENEURIAL ASSISTANCE TO OVERSEAS CONTRACT WORKERS;
- (8) AVAILABILITY OF INVESTMENT PROMOTION UNITS OR SMALL STAFF UNITS IN KEY GOVERNMENT OFFICES;
- (9) UTILIZATION OF MULTI-SECTORAL NETWORK SYSTEM THROUGH THE INDUSTRY DEVELOPMENT COUNCIL (IDC);

**(10) ASSISTANCE IN THE FACILITATION FOR THE ISSUANCE OF REGISTRATION/CLEARANCES FROM OTHER GOVERNMENT AGENCIES IN RELATION TO THEIR BOI REGISTRATION; AND**

**(11) LEGAL OPINIONS.**

**IN EXTENDING THE FOREGOING NON-FISCAL INCENTIVES, THE BOARD MAY CHARGE A MINIMAL FEE.”**

SEC. 3. Article 42, Title V of the Omnibus Investments Code of 1987, as amended, is hereby amended to read as follows:

**“Art. 42. *Refund, ADMINISTRATIVE SANCTIONS, and Penalties.* – ANY ENTERPRISE WHICH VIOLATES ANY PROVISION OF THIS CODE, ITS IMPLEMENTING RULES AND REGULATIONS, THE TERMS AND CONDITIONS OF ITS REGISTRATION OR ANY LAWFUL DIRECTIVE OF THE BOARD, OR WILLFULLY COMMITS ANY FRAUDULENT MISREPRESENTATION IN THE COURSE OF FILING AN APPLICATION FOR REGISTRATION, OR IN THE AVAILMENT OF INCENTIVES, INCLUDING ALL OFFICIAL REPORTS REQUIRED TO BE SUBMITTED BY THE BOARD, SHALL BE SUBJECT TO A FINE OF ONE MILLION PESOS (P1,000,000.00) OR AN AMOUNT EQUIVALENT TO ONE PERCENT (1%) OF ITS PROJECT COST, WHICHEVER IS HIGHER, WITHOUT PREJUDICE TO THE DISAPPROVAL OF ITS APPLICATION FOR REGISTRATION OR CANCELLATION OF ITS REGISTRATION.**

In case of cancellation of the Certificate granted under this Code, the Board may, in appropriate cases, require the refund of incentives availed of. [and impose corresponding fines and penalties].

**RESPONSIBLE OFFICERS OF SUCH ENTERPRISES, INCLUDING DULY APPOINTED EXTERNAL CONSULTANTS-AGENTS WHO KNOWINGLY COMMIT, AID OR ABET THE COMMISSION OF ANY OF THE ACTS MENTIONED ABOVE, SHALL BE SUBJECT TO A FINE OF NOT LESS THAN ONE HUNDRED THOUSAND PESOS (P100,000.00) BUT NOT MORE THAN THREE HUNDRED THOUSAND PESOS (P300,000.00).**

**GOVERNMENT OFFICERS AND EMPLOYEES WHO PARTICIPATE DIRECTLY OR INDIRECTLY IN THE COMMISSION OF THE FOREGOING ACTS SHALL LIKEWISE BE LIABLE TO A FINE OF NOT LESS THAN ONE HUNDRED THOUSAND PESOS (P100,000.00) BUT NOT MORE THAN THREE HUNDRED THOUSAND PESOS (P300,000.00), IN ADDITION TO ANY CRIMINAL AND ADMINISTRATIVE PENALTIES IMPOSABLE UNDER THE CIVIL SERVICE LAW, REVISED PENAL CODE, REPUBLIC ACT NO. 3019 (ANTI-GRAFT AND CORRUPT PRACTICES ACT), REPUBLIC ACT NO. 6713 (CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS) AND OTHER APPLICABLE LAWS.**

**IF THE OFFENDER IS A FOREIGN NATIONAL, IN ADDITION TO THE IMPOSABLE FINES AND PENALTIES ABOVE, THE FOREGOING ACTS SHALL BE GROUNDS FOR HIS SUMMARY DEPORTATION.”**

SEC. 4. *Reporting of Incentives.* – For purposes of monitoring the incentives granted by the government, the BOI and other incentives-giving agencies shall, on a quarterly basis, submit reports to the Development Budget Coordination Committee (DBCC) of the National Economic and Development Authority NEDA, on incentives availed of by their respective registered enterprises.

SEC. 5. The provisions of existing laws, rules, regulations and other issuances to the contrary notwithstanding, all the foregoing fiscal and non-fiscal incentives may be availed by BOI-registered firms as may be deemed necessary by the Board subject to the conditions set herein.

SEC. 6. *Implementing Rules and Regulations.* – The BOI, in consultation with the NEDA, Department of Finance, Department of Trade and Industry and other appropriate government agencies shall promulgate rules and regulations to implement the intent and provisions of this Act. Such rules and regulations shall take effect fifteen (15) days following its publication in a newspaper of general circulation in the Philippines.

SEC. 7. *Repealing Clause.* – All other laws, decrees, orders, issuances and rules and regulations or parts thereof inconsistent with this Act are hereby repealed or modified accordingly.

SEC. 8. *Separability Clause.* – The provisions of this Act are hereby declared to be separable and, in the event any of such provisions is declared unconstitutional, the other provisions which are not affected thereby shall remain in full force and effect.

SEC. 9. *Effectivity.* – This Act shall take effect fifteen (15) days following its publication in a newspaper of general circulation in the Philippines.

Approved,