Joint Foreign Chambers of the Philippines

AMCHAM PHILIPPINES

ANZCHAM
AUSTRALIAN-NEW ZEALAND

CANADIAN

EUROPEAN

JAPANESE

KOREAN

PAMURI

American Chamber of Commerce of the Phils., Inc. ◆ Australian-New Zealand Chamber of Commerce (Phils.), Inc.
Canadian Chamber of Commerce of the Phils., Inc. ◆ European Chamber of Commerce of the Phils., Inc.
Japanese Chamber of Commerce & Industry of the Phils., Inc. ◆ Korean Chamber of Commerce of the Phils., Inc.
Philippine Association of Multinational Companies Regional Headquarters, Inc.
Website: arangkadaphilippines.com, investphilippines.info

October 3, 2011

Hon. Ralph G. Recto
Chairman
Committee on Ways and Means
Philippine Senate
Rm. 508 5th Flr., GSIS Bldg.,
Roxas Blvd., Pasay City

Dear Chairman Recto:

First and foremost, we wish to thank you for keeping in mind the Rationalization of Fiscal Incentives Bill as one of the priority measures of the 15th Congress.

This bill, which the Joint Foreign Chambers believes is critical to the Governments aim of increasing the Philippine's competitiveness in terms of attracting foreign investments, has been pending for over a decade now.

We believe that this is an opportune time for this bill to finally become a law. Hence, we take this opportunity to relay to you our suggested further refinements to the House of Representatives' Substituted Bill for your Committee's consideration. They are, as follows:

Comments on Specific Provisions of the Substituted Fiscal Rationalization Incentives Bill of the House of Representatives:

1. Chapter II, Section 8. Powers and Functions of the Board

We are suggesting that another function be added as paragraph "m" to read as follows and re-letter:

> *"m. Seek to reduce barriers to foreign investment in the Philippines by reviewing legal and administrative obstacles to such investment, contained in the Foreign Investment Negative List and elsewhere. The BOI should report at least once a year to the Congress its assessment of the importance of the restrictions in the Foreign Investment Negative List accompanied by recommendations on which should be*

retained and which should be modified and/or removed from the list in order to encourage more foreign investment in the national economy."

The BOI is the primary government agency for Investment Promotion and Industrial Development. In the global economy, barriers have steadily been removed to facilitate trans-border investment. With the exception of opening the gambling sector to up to 100 percent foreign equity, no significant liberalization of the foreign investment regime has been made since the Retail Trade Act in 2000. Adding the above function to the Investment and Incentives Code of the Philippines will express the desire of the Congress to encourage more foreign investment and will establish the BOI as the leading government agency to study and recommend investment reform.

The rest of the functions should be re-lettered.

2. Section 11. The Investment Promotion Action Center (i-PAC)

We suggest to add the following language in the composition of the *i*-PAC:

"the Department of Tourism and the Commission on Higher Education"

Since this section specifies which government agencies shall be represented at the i-PAC, the Department of Tourism and CHED should be added. The Department of Tourism has a strong interest in investment in all areas of tourism, while CHED influences the content of curriculum and the quality of training at nearly two thousand tertiary educational institutions in the country.

3. Title II Section 15 Definition of Terms par. (i) Export Enterprise

Lines 32 to 33 be reworded to read, as follows:

"and whose export sake of its products or services must be at least seventy percent (70%) of it annual production of the preceding year."
The word "exceed" must be replaced with the phrase "must be at least".

4. Section 15 Definition of Terms par. (0) Ecozones

Add language in line 23:

"creative industries'

Creative industries are a Big Winner Sector and should be recognized by being included in this definition.

5. Section 15 Definition of Terms par. (t) ICT center

Add language after the word ICT at line 11:

"and creative industries'

Creative industries are a Big Winner Sector and should be recognized by being included in this definition.

6. Title III Section 16 Investments Priorities Plan (IPP)

There is a seeming contradiction between the requirements under par. (b) of Section and Section 19 par. 2. We favor the later language and suggest that par. (b) of this Section be revised to read, as follows:

"b. The activity shall satisfy any three of the following conditions:
1) large capital investment;
2) generate sizeable employment;
3) use of new and internationally accepted high level of technology; and
4) creation of value-added.

7. Section 16 Amendments

Add language in line 26 after the phrase "at any time"

"after public consultations,"

8. Amendment to Section 20 (a) (2)

We recommend that Section 21 (a) (2) be revised to read, as follows:

"2) Five percent (5) Tax on GIE, in lieu of national and local taxes, *including but not limited to VAT on their registered activity, VAT on importation directly related to their registered activity, documentary stamp tax (DST) and excise taxes*, except RPT on land owned by private developers, for a period of twenty five (25) years."

It should be clearly specified that the 5% preferential tax rate will exempt the grantee even from the payment of other national taxes like DST and excise tax. Currently, the BIR is of the opinion that the "in lieu of" provision of the 5% preferential tax regime only exempts the grantee from national taxes that are directly related to or arising from the registered activity of the grantee. Thus, for example, if an export enterprise under the 5% tax regime sells its factory building, the said sale is not exempt from DST because the BIR believes

that DST is an excise tax imposed upon the privilege to execute such documents and not on the income from the grantee's business activity.

9. Section 20 (b)(2)(iii) - Incentives to Registered Export Enterprises (for those located outside economic zones).

We recommend that the provision be revised to read as follows:

> "The *cash* refund of VAT and customs duty on importation of raw materials, supplies….xxx".

10. Section 20 (c) Tax and Duty Free Importation of Source Documents.

We recommend that the current wording of this provision be revised to read as follows:

> "The importation of source documents by registered enterprises shall be eligible for VAT and customs duty exemption *during the duration of their income tax-based incentive*."

This incentive should not be limited to ten (10) years. Its duration should coincide with the duration of the ITH and reduced income tax rate of the registered enterprise so as to encourage investments in this industries.

11. Section 20 (d) Zero Percent (0%) Rate of VAT on the Sale by a Domestic Enterprise to a Registered Export Enterprise.

The title of this provision should be revised to read, thus: "Zero Percent (0%) Rate of VAT on the Sale *from Customs Territory* to a Registered Export Enterprise."

This provision should be revised to read, as follows:

> "The provision of law to the contrary notwithstanding, the sale by *any enterprise from customs territory* of goods and/or services to a registered export enterprise …."

The reason for the suggested revision is because this bill provides a specific definition of a "domestic enterprise" In Section 15 (j) as that one which is registered with an IPA. Hence, the current provision will limit the zero-rating only to sales by domestic enterprises that are registered with an IPA. In other words, under the current wording of this provision, the sales of goods and services by non-registered domestic enterprises to Registered Export Enterprises will become subject to VAT.

12. Section 20 (f) (2) Employment of Foreign Nationals

We recommend the deletion of the enumeration of requirements before a foreign national can be employed by a registered export enterprise.

The registered export enterprise should have maximum flexibility in whom it hires and how it trains employees. In most cases, the registered enterprise will hire a Filipino and also train Philippine nationals because of their qualifications and excellent value. Further, the registered enterprise enjoys a double deduction fiscal incentive for training all personnel it hires. The enumerated conditions are unnecessary because the free market and the allowed fiscal incentive will achieve the policy objective of training Filipinos without it.

Please note that enterprises registering under the PEZA do not currently have this requirement, and the new bill will apply a new restriction and paperwork requirement on hundreds of export companies to which it does not currently apply. This reduces national competitiveness.

13. Section 21 (b)(1)

We recommend that the fourth line of the provision (line 9) be revised to read, as follows:

> "xxx while in the ecozones or freeports, *be subject to VAT* and customs laws of the Philippines as domestic goods sold, xxx"

We are suggesting the revision to clarify the tax treatment of goods/merchandise sent or sold to customs territory. They should be subject to VAT and customs duties but they should be covered by the ITH or 5% GIE if the 30% threshold is not exceeded. Hence, the phrase *"subject to internal revenue"* should be replaced with the phrase "*subject to VAT"* for purposes of clarity.

14. Section 21 (b)(2)

We recommend that the Section 22(b)(2) be revised to read, as follows:

> "2) Sale of service by registered ecozone and freeport enterprise to the customs territory *shall be subject to VAT*."

We are suggesting the revision to clarify the tax treatment of sale of service by ecozone and freeport enterprises to customs territory is subject only to VAT but not to income tax as long the revenue threshold of 30% for domestic sales is not exceeded. Income tax is also an internal revenue tax, hence, the phrase "*applicable internal revenue laws and regulations"* should be replaced with the phrase *"shall be subject to VAT"* for simplicity and clarity.

15. Section 22 (b)(2)

We recommend that par. 2 be deleted entirely and expand exemption in par. 1 to include exemption from VAT on importation of capital equipment.

Section 22 (b) should be revised to read, as follows:

> "*Exemption from VAT* and customs duty on importation of capital equipment, including consignment subject to Section 33 of this Act."

16. Section 23 (b)(2)

We recommend that par. 2 be deleted entirely and expand exemption in par. 1 to include exemption from VAT on importation of capital equipment.

Section 23 (b) should be revised to read, as follows:

> "*Exemption from VAT* and customs duty on importation of capital equipment, including consignment subject to Section 32 of this Act."

17. Section 24 (b)(2)

We recommend that par. 2 be deleted entirely and expand exemption in par. 1 to include exemption from VAT on importation of capital equipment.

Section 24 (b) should be revised to read, as follows:

> "*Exemption from VAT* and customs duty on importation of capital equipment, including consignment subject to Section 32 of this Act."

18. Section 28 Entitlement to Investor's Visa by a Foreign National.

The amount of $150,000 is inconsistent with the foreign investment threshold of $100,000 in the Foreign Investments Act (RA 7042) and should be that amount.

Further, EO 758 dated November 17, 2008 "Special Visa for Employment Generation" authorizes the Commissioner of Immigration to issue a Special Visa to a foreign national who employs ten Filipinos, without any investment requirement. This provision of EO 758 could be incorporated into the bill by adding a new section using the following language:

> *"Section 29. Special Visa for Employment Generation. A qualified non-immigrant foreigner who shall actually employ at least ten (1) Filipinos in a lawful and sustainable enterprise, trade or industry may be issued*

a Special Visa for Employment Generation (SVEG) under Executive Order 758, Series of 2008. Qualified foreigners who are granted the SVEG shall be considered special non-immigrants with multiple entry privileges and conditional extended stay, without need of prior departure from the Philippines."

19. Chapter III Availment of Incentives Section 30 (c) Double Deduction for Training Expenses

This provision should include training expenses for "potential" employees and training programs in collaboration with schools accredited by DECS or CHED.

Companies are increasingly working directly with colleges, universities, and other schools to train students in skills to enable them to obtain better quality jobs in industry. The electronics and IT-enabled call center, and mining industries are especially active in this regard, spending on training for potential employees. Given the funding limitations faced by many schools, this is an excellent way to supplement their limited funding and encourages closer government and industry collaboration to prepare the youth with skills necessary for higher-value future employment.

We recommend that an additional paragraph be added, as follows:

"The same benefit of double deduction shall likewise extend to expenses paid or incurred by the registered export enterprise in its training projects in collaboration with schools and universities accredited by the Department of Education (DepEd) or Commission on Higher Education (CHED). The training expenses incurred shall be deductible from taxable income on the taxable year the said training expenses were incurred."

20. Section 32 (a). VAT and Customs Duties Exemption on Capital Equipment. -

The word "*may"* in line 13 should be replaced with the word *"shall"*

We recommend the deletion of the last sentence (lines 22 to 23) in Section 32 (a) which reads: "They are not manufactured domestically in sufficient quantity, of comparable quality and at reasonable prices;"

Investors should be free to select equipment regardless of origin and price and left to their discretion, in accordance with best international practice.

21. Section 32 Last Paragraph (on disposition of capital equipment, machinery, etc)

We recommend that a new last paragraph be added to this Section 32 that will read, as follows:

> *"In any case, any transfer or disposition of capital equipment which partake of contributions or gifts in the exercise of its corporate social responsibility through activities such as, but not limited to, charitable, scientific, youth and sports development, cultural or educational purposes, services to veterans and senior citizens, social welfare, health, environmental sustainability and disaster relief and assistance shall be exempt from VAT, duties and taxes and donors tax."*

22. Section 33. VAT Refund Mechanism on Importation of Capital Equipment and/or raw materials.

We recommend that the paragraph of this provision be revised to read, as follows:

> "A registered enterprise shall claim for VAT refund within one (1) year *from the date such input taxes were incurred*. *Otherwise, the taxpayer has the option to claim such unutilized input taxes as an expense deductible from its gross income, whether under 5% GIE or 50% reduced CIT*."

The one (1) year period for filing of claims for refund should not be reckoned from the date of export sale because this is a source of confusion. There are input taxes which you cannot directly attribute to export sales. Also, there are many cases where huge input taxes were incurred in connection with construction of the manufacturing plants. This construction normally takes two years to complete before actual operation can commence. Why do these registered export enterprises have to wait for their actual exportation before they can refund their input VAT?

The claimants must also be given the right to wait for the final decision of the One-Stop-Shop even beyond the thirty day period and one-year period mentioned in this provision and the claimants should be given the right to appeal to the Court of Tax Appeals (CTA) the decision of denial of their claim within 30-days from receipt of decision of denial or reduction of claim.

23. Chapter V Administration of Incentives. Section 38. No Double Registration of Enterprises.

The title of this provision should be revised to read as: "No Double Registration of Activities."

Registered enterprises should not be required to put up a separate corporation or entity for each activity that will require registration under different IPAs. For example, if a PEZA registered enterprise located in Baguio can no longer find a suitable place for its expansion due to lack of space in the ecozones in Baguio, why should it be required to put up another corporate entity just to be able to locate in Clark ecozone or in SBMA? The maintenance of separate corporate entities for purposes of registration under different IPAs is not only impractical but also costly for businesses.

24. Section 39 Environmental Protection and Corporate Social Responsibility.

We fully support the policy of that responsible business enterprises should be active in supporting a better environment and engaging in CSR. Many such enterprises do so and leading business associations actively promote such activities to their members.

However, we question whether all registered enterprises should be required to file plans with their respective IPAs, as this would create a burden of paperwork on the firms and additional monitoring/quasi-regulatory functions on the IPA. Instead, we suggest that the IPAs be required to prepare lists of Environmental Protection and Corporate Social Responsibility activities, at the IPA and in vicinity which firms may choose to support through funding, volunteerism of employees and their families, and by other customary means.
We recommend the deletion of this provision. We believe that it is totally unnecessary to compel registered enterprises to have programs for environmental protection and corporate social responsibility. This is just going to be an additional administrative burden to potential registrants and existing registered enterprises.

We believe that this provision discriminates against registered enterprises as there is no similar imposed or legislated "corporate social responsibility" for unregistered enterprises.

25. Section 52 Transitory Provision

We recommend that this provision be revised to read, as follows:

> *"Section 51. Transitory Provision. – The incentives under Section 21 of this Act shall be applicable to existing BOI-registered export enterprises, particularly the tax and duty-free importation of equipment and raw materials by the said BOI-registered export enterprises. Until the IRR of this Act shall effect, the present rules and regulations under the old investment laws shall apply to the extent that they are not inconsistent with the provisions of this Act."*

It should be specified that the tax and duty-free incentive presently enjoyed by the PEZA-registered enterprises and which will be enjoyed by all registered export enterprises under this Act should be made to apply to existing BOI-registered export enterprises as well. Otherwise, existing BOI-registered export enterprises will continue to suffer from the inequality in tax treatment that this Act is trying to cure.

AUSTEN CHAMBERLAIN
President
American Chamber of Commerce
of the Philippines, Inc.

JOHN CASEY
President
Australian-New Zealand Chamber
of Commerce of the Philippines, Inc.

JULIAN PAYNE
President
Canadian Chamber of Commerce
of the Philippines, Inc.

HUBERT D'ABOVILLE
President
European Chamber of Commerce
of the Philippines, Inc.

NOBUYA ICHIKI
President
Japanese Chamber of Commerce
& Industry of the Philippines, Inc.

EUN GAP CHANG
President
Korean Chamber of Commerce
of the Philippines, Inc.

SHAMEEM QURASHI
President
Philippine Association of Multinational Companies
Regional Headquarters, Inc.