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PBG-JFC Statement on Tax Incentives Management and Transparency Act

The Philippine Business Groups and Joint Foreign Chambers (PBG-JFCs), a coalition of 14 local and foreign business groups, whose memberships total nearly 35,000 firms and individuals, have sent letters to the House and Senate Committee on Ways and Means expressing support to and suggesting amendments to the Joint DOF-BOI Draft/amended version of the proposed Tax Incentives Management and Transparency Act (HB 2492 and SB 2669).

The business groups, while lauding the overall objective of the bill to promote transparency and accountability in the granting of incentives, likewise submitted recommendations to the Congressional Committees, which included the following:

- Amend the Declaration of Policy to reflect the State policy to attract, promote and welcome productive investments from foreign nationals in activities which significantly contribute to national industrialization and socio-economic development;
- Remove the requirement of electronic filing of income tax returns (ITR) as this filing method may change from time to time depending on applicable or existing regulations of the Bureau of Internal Revenue (BIR);
- Lower penalties for failure to submit application for incentive claims with the Board of Investments (BOI) and other Investment Promotion Agencies (IPAs) within six months from forfeiture of incentives to imposition of a fine ranging from P1,000 to P50,000, depending on the amount of incentives availed, to make the penalty consistent with the National Internal Revenue Code. Forfeiture of incentives for merely failing to timely file an application for incentive claim is unduly harsh and disproportionate to the minor infraction, and hence, confiscatory.
- Remove the proposed provision effectively extending by 18 months the prescriptive period within which the BIR may make an assessment. Aside from diminishing the substantive rights of taxpayers afforded under the 1997 NIRC, the additional 18-month period is unconstitutional as it violates the equal protection clause.

There is no substantial distinction between IPA-registered enterprises and regular corporations insofar as BIR tax audit and examination are concerned. Both IPA-registered enterprises and regular corporations are bound by law to file their annual ITRs on the same date, that is, April 15, hence, the three-year prescriptive period for the BIR to make an assessment from the filing of the income tax return is already a reasonable period. Both are bound by the same deadline for the filing of their respective audited financial statements.



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The 1997 NIRC imposes upon the BIR a time period within which to make an assessment and enforce collection. Beyond this statutory period, the BIR loses its right to issue an assessment or enforce collection. The prescriptive period to assess is three years from filing of the ITR, while the prescriptive period for collection is five years from the issuance of the assessment. Time and again, the Supreme Court has honored the sacredness of these prescriptive periods as these protect the citizenry from possible governmental abuse of the power of taxation.

The proposed House version significantly extends the prescriptive period from three years to four and a half years, which is an unnecessary diminution of substantive rights already granted to taxpayers.

- Clarify the extent and scope of the publication to be truly reflective and balanced. The information to be published should also include such matters as the employment generated, the amounts invested (and hence risk assumed), the products/services made available to the economy/public, and even all the other taxes actually paid by the concerned taxpayers/entities.

While the intent is to monitor the availment of tax incentives for information purposes, the publication of such information would give the unfair negative impression that the taxpayers involved are not sharing the same burden as ordinary taxpayers.

The JFC-PBG also proposed the inclusion of taxes directly paid by the IPA-registered enterprises or taxes remitted by them on behalf of other taxpayers (e.g., withholding tax on compensation, fringe benefits tax, etc.) in the data analysis.

- Clarify the role of the BIR vis-à-vis BOI/IPA as regards incentives. In many instances (and this has become a consistent practice of the BIR) the BIR disallows incentives even if these are already approved by the BOI or IPAs. The BOI and relevant IPAs have exclusive jurisdiction to determine eligibility for investment incentives. In at least two decided cases, the Supreme Court held that the BIR cannot question the incentives given by the BOI/IPAs as this is beyond the BIR's authority. Notwithstanding these decided cases, the BIR continues to encroach on the BOI/IPAs jurisdiction to determine eligibility for incentives.

The signatory organizations include the American Chamber of Commerce of the Philippines, Australian-New Zealand Chamber of Commerce of the Philippines, Canadian Chamber of Commerce of the Philippines, European Chamber of Commerce of the Philippines, IT and Business Process Association of the Philippines, Japanese Chamber of Commerce and Industry of the Philippines, Korean Chamber of Commerce of the Philippines, Management Association of the Philippines, Philippine Association of Multinational Companies Regional Headquarters, Philippine Chamber of Commerce and Industry of the Philippines, Philippine Exporters Confederation, Semiconductor and Electronics Industries in the Philippines Foundation, and Tax Management Association of the Philippines