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SEIPI SEMICONDUCTOR & ELECTRONICS INDUSTRIES IN THE PHILIPPINES FOUNDATION, INC.

March 3, 2020

**Sen. Pia Cayetano**
Chairperson
Committee on Ways and Means
Senate of the Philippines
Pasay City, Manila

Dear Chairperson Cayetano:

First of all, we would like to express our sincere and deep appreciation for listening to our appeal to make improvements to the House CITIRA Bill and for providing a superior incentive package in Senate Bill No. 1357.

As regards Senate Bill No. 1357, we hope you will consider the following inputs:

***Section 3 amending Sections 4 of the NIRC – (on Power of Secretary of Finance to Interpret Tax Incentives)***

We suggest the deletion of the proviso granting the Secretary of Finance the exclusive and original jurisdiction to interpret the provisions on the tax incentives. We believe that such power will ultimately render nugatory and useless the mandate of the FIRB as a collegial body.

***Sections 5 and 6 amending Sections 27 and 28, respectively, of the NIRC***

We believe that the proposed reduction of corporate income tax (CIT) of two percentage points (2%) every two years, which will only begin to take effect in 2020, is "too little, too slow." The Philippines has long suffered from high corporate tax rates, which has proven to have been ineffective compared to the experience of our ASEAN neighbors.

We note that the mean average CIT in Asia is only 22.5% and globally is only 23% (source: https://taxfoundation.org/corporate-income-tax-rates-around-the-world-2017).

Thus, it is a no-brainer for investors considering Southeast Asia as an investment destination not to pick the Philippines, given that we have the highest CIT rate, highest cost of power, and less than desirable state of infrastructure, among others. No wonder that the Philippines is receiving the least amount of FDI almost every year among major ASEAN economies.

We believe that this is an opportune time for the Philippines to take a big step and make a bold statement that we are indeed serious in welcoming foreign investments into the country.

In this regard, our suggestion is to revise Section 27 and 28 to read, as follows:

*"SECTION 27. Rates of Income Tax on Domestic Corporations. —*

*"(A) In General. — Except as otherwise provided in this Code, beginning January 1, 2020, an income tax of twenty-five percent (25%) is hereby imposed upon the taxable income derived during each taxable year from*

> *all sources within and without the Philippines by every corporation, as defined in Section 22(B) of this Code and taxable under this Title as a corporation, organized in, or existing under the laws of the Philippines: Provided, That the rate of corporate income tax shall be twenty four percent (24%) beginning January 1, 2021; twenty three percent (23%) beginning January 1, 2022; Twenty two percent (22%) beginning January 1, 2023; Twenty one percent (21%) beginning January 1, 2024 and Twenty percent (20%) beginning January 1, 2025."*
>
> *"SECTION 28. Rates of Income Tax on Foreign Corporations. —*
>
> *(A) Tax on Resident Foreign Corporations. —*
>
> *(1) In General. — Except as otherwise provided in this Code, beginning January 1, 2020, a corporation organized, authorized, or existing under the laws of any foreign country, engaged in trade or business within the Philippines, shall be subject to an income tax of twenty-five percent (25%) of the taxable income derived in the preceding taxable year from all sources within the Philippines: Provided, That effective January 1, 2021, the rate of income tax shall be twenty four percent (24%); twenty three percent (23%) beginning January 1, 2022; Twenty two percent (22%) beginning January 1, 2023; Twenty one percent (21%) beginning January 1, 2024 and Twenty percent (20%) beginning January 1, 2025."*

Accordingly, the provisos in Section 34 (B)(1) of the NIRC should also be revised to read, as follows:

> *"Section 34. Deductions from Gross Income. xxx*
> *(A) Expenses*
> *(B) Interest. - xxx*
> *(1) In General. –*
>
> *Provided, however, that the taxpayer's otherwise allowable deduction for interest expense shall be reduced by 20% beginning January 1, 2020; Provided, Further, that the following percentages shall apply if the corporate income rate as provided in Sections 27 (A) and 28 (A)(1) is adjusted:*
>
> *(a) If rate is twenty four percent (24%), interest rate reduction is sixteen percent (16%);*
> *(b) If rate is twenty three percent (23%), interest rate reduction is thirteen percent (13%);*
> *(c) If rate is twenty two percent (22%), interest rate reduction is nine percent (9%);*
> *(d) If rate is twenty one percent (21%), interest rate reduction is five percent (5%);*
> (e) *If rate is twenty percent (20%), interest rate reduction is zero percent (0%)."*

We also propose that the above rate reduction in CIT not be made subject to any condition, so as to provide certainty to business.

***Section 6 amending Section 28 (A)(5) of the NIRC – (on BPRT Exemption of PEZA Philippine Branches)***

We recommend the deleted exception be replaced with the following statement:

> *"Profits earned beginning January 1, 2020 by Philippine branches of Registered Business Enterprises shall be subject to BPRT."*

This will provide clarity that only profits earned beginning January 1, 2020 by PEZA-registered Philippine branches shall be subject to BPRT and that profits earned before January 1, 2020 shall remain exempt from BPRT.

***Section 6 amending Section 28 (A)(6)(b) of the NIRC* – (on ROHQs)**

We recommend to rephrase the above provision, as follows:

> *"Regional Operating Headquarters as defined under Section 22 (EE) shall pay a tax of ten percent (10%) of their taxable income: Provided, that after two years from the effectivity of this act, existing regional operating headquarters shall be subject to the regular corporate income tax; provided, further, that the SIPP shall include in the list of qualified activities those covered in Section 22 (EE) of the National Internal Revenue Code which shall henceforth be provided by Global Corporate Centers (GCCs); Provided, Further, that those that will qualify as GCCs under the conditions stipulated in the SIPP shall continue to be taxed at ten percent (10%) of their taxable income, for the periods to be provided under the SIPP but in no case to exceed four (4) years from the effectivity of this Act; provided, finally, that GCCs may be a domestic or foreign corporation."*

As many ROHQs serve mostly foreign affiliates, we believe that the shared services industry should be definitely encouraged by allowing them to avail of the incentives under this bill, if they are so qualified.

We request your good office to carefully consider the important points extensively discussed in the position paper of the Philippine Association of Multinational Companies' Regional Headquarter, Inc. (PAMURI) regarding the importance of the shared services sector as a rising industry.

We believe that it is also very important for your Committee to know that Thailand and Malaysia continue to provide incentives to their ROHQs and have tailored them in a way that their ROHQs are compliant with the OECD guidelines against "harmful tax practices." Thailand, in particular, now grants a preferential corporate income tax of 3%, 5% or 8% (and 15% personal income tax on expatriate employees) to their International Business Centers (IBCs, their equivalent of ROHQs) depending on the amount of local expenditure of the IBC. We believe that the same can be done in the Philippines to encourage the growth of the shared services industry.

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***Section 9 introducing new Section 294 of the NIRC – (on Allocation of Revenue between IPAs and LGU)***

We strongly recommend that the bill should already provide the exact respective percentage share of the IPAs and LGUs in the special corporate income tax rate that will be paid by the Registered Business Enterprises (RBEs). Otherwise, this will become a contentious issue later on.

***New Section 294 (C)(2) to (7) and Section 295 (B) – (on Enhanced Deductions)***

We recommend to delete the phrase “up to” to get rid of the uncertainty and eliminate the exercise of discretion by the approving body. For example, if the training is already approved by the IPA, why does the FIRB need to determine the allowable percentage of deduction for such training? This will make everything too bureaucratic and opposed to the government’s goal of simplifying doing business in the country.

***New Section 294 (C)(7) and Section 295 (B)(7) – (on Investment Allowance)***

We believe that reinvestment allowance should not be limited to the manufacturing industry. The reinvestment allowance should be applied to all registrable industries to encourage expansion projects of foreign investors in the country and generate the much needed high-paying jobs that our countrymen need to grow the middle-class segment of our society.

***New Section 295 (B)***

We suggest to reword the first sentence of Section 295 (B) to read, as follows:

> *“<u>At the option of the registered business enterprise</u>, the enhanced deductions shall be granted in lieu of the income tax holiday and the special corporate income tax rate;”*

The underlined phrase will provide clarity that the availment of the enhanced deduction is an option of the applicant/registrant. We note that as Section 295 (B) is currently worded now, it is not clear if the RBE has the option to avail of the enhanced deduction instead of the ITH or SCIT.

***New Section 295 (B)(4) – (on Approval of Trainings by IPAs)***

We do not see the need for approval of the trainings by IPAs. The IPAs cannot claim that they know better which trainings are necessary and indispensable to the operations of the RBEs. Prior approval of trainings by IPAs will just add to the bureaucratic process. In the alternative, if prior approval by IPAs of trainings will be required, then, all trainings should be allowed 100% additional deduction already without need of any further conditions anymore.

***New Section 295 (C)(1) – (on Conditions for Duty-Free Importation)***

We suggest to remove the conditions that the imported capital equipment, raw materials, and spare parts are not produced or manufactured locally in sufficient quantity or of comparable quality and at reasonable price. We believe that these are useless conditions given that additional domestic input expense should be enough to encourage local sourcing of supplies by RBEs.

***New Section 295 (C)(2)(d)– (on Subsequent Dispositions of Capital Equipment, etc)***

We strongly recommend to add a proviso in Section 295 (C)(2)(d) that will read, as follows:

> *"(d) Proven technical obsolescence of the capital equipment, raw materials, spare parts or accessories.*
>
> *Provided that, transfer by donation of machinery, equipment, raw materials, spare parts or accessories to TESDA, state colleges and universities, or DECS/CHED-accredited schools due to technical obsolescence shall be exempt from duties and taxes, including donor's tax.*
>
> *All transfers that comply with the aforementioned conditions enumerated in (a), (c) and (d) above shall not result to the imposition of the taxes not imposed upon tax and duty-free importation of the said capital equipment, raw materials, spare parts, or accessories."*

The proviso is meant to facilitate the donation of equipment particularly computers and laptops to schools that will enhance the learning of both students and teachers. Currently, such donations are required to pay duties and taxes based on original cost, resulting in few donations.

The last paragraph is meant to provide clarity that transfers that comply with the above conditions will not be subject to duties and taxes.

***New Section 296 (A), 2nd Proviso – (on SCIT for Existing RBEs)***

For clarity, we recommend that the second proviso be reworded to read, as follows:

> *"That existing registered projects or activities prior to the effectivity of this Act may qualify to register under this Act and avail of the special corporate income tax or <u>enhanced deductions</u> for the prescribed period subject to the criteria and conditions set forth in the Strategic Investment Priority Plan. <u>The SCIT for existing registered projects or activities, if availed of, shall not exceed twelve (12) years."</u>*

The underlined statement will provide clarity that the SCIT for existing registered RBEs or activities can also be up to 12 years and that the Enhanced Deductions can also be availed of by existing RBEs. We note that it is not clear in the current wording of this provision if existing RBEs can also avail of the Enhanced Deductions.

***New Section 296 (B) – (on Prioritized Projects or Activities)***

We recommend that the enumeration of Tier III activities be revised to read, as follows:

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> "3) Tier III activities shall include, but not be limited to, the following activities: highly technical manufacturing and services activities that indispensably requires the employment of knowledge, modern science, engineering, and research in the process of production of goods and services, information technology and business process outsourcing and management services, resulting in demonstrably significant value-added and high paying jobs."

Specifically including "information technology and business process outsourcing and management services" in Tier III to make it explicitly clear that business process outsourcing continues to generate high-paying jobs for Filipinos and substantially contribute to the country's foreign exchange reserves will definitely remain a registrable activity and entitled to the critical support of the Philippine government.

***New Section 296 (B) – (on Location Criteria)***

We recommend that the location classification be revised to read, as follows:

> *"(1) NCR and Metropolitan Areas defined as… xxx;*
> *(2) Areas adjacent to NCR (Bulacan, Cavite, Laguna and Rizal);*
> *(3) Less Developed Areas (LDA) and All Other Areas."*

We believe that what should be considered as "Metropolitan Areas" must be clearly defined to avoid confusion.

We believe that the above classification is more attuned with the government's aim of promoting countryside development towards increasing inclusive growth.

***New Section 297 (B) – (on the Expanded Functions of the FIRB)***

We recommend that Section 297 (B) be reworded, as follows:

> *"Section 297. Expanded Functions of the Fiscal Incentives Review Board. –*
>
> *(A) xxx xxx*
> *(B) To approve or disapprove the grant of tax incentives but only for investments exceeding US$ 1 Billion, upon recommendation of the Investment Promotion Agency: Provided, that the application for tax incentives shall be deemed approved if not decided upon by the FIRB after twenty (20) days from submission of the Investment Promotion Agency's recommendation to the FIRB: xxx"*

Consistent with the government's aim to promote the ease of doing business in the country, we believe that the IPAs should be allowed to maintain their approving power for investments not exceeding US$ 1 Billion so as to complement the country's decisiveness to accept foreign investments with efficiency.

We also believe that a shorter period of twenty (20) days instead of forty five (45) days would be more consistent with the new presidential Administrative Order No. 23 dated Feb 11, 2020 entitled "Eliminating Overregulation to Promote Efficiency of Government Processes" which aims to rid of "excessive regulations at all levels of government which are more than necessary to implement their respective mandates, create high cost on businesses, inhibit job creation and discourage private sector investment."

***New Section 298 – (on the Composition of the FIRB)***

We strongly recommend that a representative from one of the IPAs and from one of the industry associations of the RBEs be included as part of the technical committee so that the FIRB can get the perspective of these two important stakeholders.

***New Section 304 (Qualifications of a Registered Business Enterprise for Tax Incentives***

We take note that Senate Bill No. 1357 only clearly provides (in Section 296 (A) and in Section 311 (C) ) that existing RBEs, upon effectivity of this Act, only have the OPTION to DEREGISTER and then, register under this Act and will only be entitled to SCIT as an incentive.

We wish to bring to your attention that SB No. 1357, even if read in its entirety, is still not clear if existing RBEs can register their expansion activities or renew their incentives, if qualified, after their pertinent incentives expire. In other words, there is nothing in SB No. 1357 that explicitly states that existing RBEs can register their expansion activities or renew their incentives when they expire. We respectfully emphasize that these benefits, namely, registration of expansion activities and renewal of incentives, were repeatedly promised to the private sector both by Cong. Salceda and Usec. Chua in various fora.

Thus, to avoid confusion and make sure that this commitment of the government will be realized, we are recommending to add a new paragraph *F* to Section 304 that will read, as follows:

> *"Section 304. Qualifications of a Registered Business Enterprise for Tax Incentives. - xxx xxx xxx*
>
> *(F) Expansion Projects and Renewal of Applications.*
>
> *Expansion of registered activities may qualify to register under this Act as well as renewal of expiring registered project or activities and shall be entitled to applicable incentives under Section 294 for the prescribed period subject to the criteria and conditions set forth in the Strategic Investments Priorities Plan"*

We believe that giving the registrants the opportunity to register their expansion activities or renew their expiring incentives will further encourage foreign investment into the country and would still be in keeping with the government's aim to make the incentives time-bound and performance-based.

***New Section 311 (C)(4)***

We strongly recommend that this paragraph be reworded to read, as follows:

> *"Ten (10) years for projects, activities, or registered business enterprises that will satisfy any of the following conditions: (i) registered exporters that export one hundred percent (100%) of their goods and/or services, PROVIDED THAT exporters exporting at least ninety percent (90%) of*

> *their goods and/or services shall also qualify but the portion of their sales that are not for export shall not be entitled to the benefits of Title XIII; (ii) registered business enterprises that employ an aggregate of at least ten thousand (10,000) Filipino employees directly engaged in the production of the registered project(s) or activity(s) prior to the effectivity of this Act, regardless of whether the employees are performing their activities in one location or in several locations or such registered business has several registered activities, projects, and/or sites; (iii) registered business enterprises engaged in footloose projects or activities as defined herein."*

The ten-year period is being proposed to further encourage industries that export 100% or almost 100% of their goods and/or services. The other underlined statements are being proposed to provide further clarity that the 10,000-employee requirement is not on a per site or per activity basis but on a per enterprise or entity level.

As you are very much aware, in 2019, global economic growth was harmed by the disruptive US-China trade disputes. In recent months, the Philippines has experienced a volcanic eruption in proximity to many of the country's largest export industrial estates, and the harmful effects of the spreading pandemic (COVIS-19) certainly did not help and is now being felt by the Philippine economy (manufacturing firms that are dependent on supplies from China, to the hotel and airline industries are down).

Furthermore, uncertainty created by the proposed TRAIN 2/TRABAHO/CITIRA tax regimes for existing foreign investors led to significant reductions in inward FDI in PEZA and other major special economic zones. Last week US stock exchanges suffered their worst drop since 2008.

Such events are leading to realignments of regional logistics supply chains as the reliance of multinational firms on manufacturing in China is being questioned, leading to accelerated diversification out of China into Southeast Asia, especially Vietnam.

Unfortunately, the Philippines is not benefiting with increased inward FDI due to policy uncertainty over the last two years over the future of fiscal incentives. Thus, by providing exporting RBEs a long transition period to enjoy existing incentives and providing an attractive package of incentives for new investors, we believe that the Philippines will strengthen its fiscal policies in order to once again attract significant inflows of foreign investment in the manufacturing and service industries.

***Last Paragraph of New Section 311 (C) – on Footloose Project or Activity***

We recommend that the last paragraph of Section 311, particularly the 2nd requirement for the qualification of a footloose project or activity to be reworded, as follows:

> *"For purposes of this Section, a footloose project or activity shall meet all of the following conditions: (1) It is is a manufacturing activity or project; (2) it has a labor cost to depreciation expense of capital equipment ratio of at least 70% for three consecutive years immediately preceding the year of implementation of this Act; xxx xxx"*

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***New Section 312 - Structural Adjustment Fund***

We strongly recommend that SB 1357 adopt the Structural Adjustment Fund proposed under HB 4157 to support the IT-BPO industry to help prepare Filipino employees maintain their competitive advantage and employability. We believe that the Structural Adjustment Fund of PhP5 billion pesos will be a major and critical aid in training Filipino employees to graduate from standard voice calls into higher value-added services like software development, robotic processes and automation, and even R&D on artificial intelligence (AI).

***New Section 10 (A) (6) and Section 10 (B) (1) – (removal of PEZA's authority)***

Finally, our clamor is to retain PEZA's full authority to process and approve applications for registration of registrable projects or activities under the SIPP. We believe that credit should be given where credit is due and given PEZA's proven track record of efficiency for so many years, the trust and confidence of foreign investors on PEZA as a corruption-free agency, and its ability to promote the Philippines and attract foreign investments into the country, the said body should be allowed to retain its powers and functions.

We believe that the safeguards put in place by the government such as TIMTA and all the administrative reporting requirements placed on PEZA-registrants are more than enough check-and-balance mechanisms already to make sure that PEZA does not overstep its authority.

In this regard, we respectfully request the deletion of new Section 10 (A)(6) and Section 10(B)(1) in SB 1357.

We hope and trust that our comments and suggestions will merit your considerations in the deliberations of this bill.

We sincerely appreciate your consideration of our comments, and look forward to any questions you may have on our proposals.

Sincerely yours,

**PETER HAYDEN**
President
American Chamber of Commerce of the Philippines, Inc.

**DANIEL ALEXANDER**
President
Australia-New Zealand Chamber of Commerce of the Philippines

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

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**CC:** All senators
Sec. Carlos G. Dominguez III
Sec. Ramon M. Lopez
Usec. Karl Kendrick T. Chua
Usec. Ceferino S. Rodolfo

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