Investment and Incentives Laws

Reference Guide

Major laws that provide incentives	o Omnibus Investments Code of 1987 (EO 226), as amended o Bases Conversion and Development Act of 1992 (RA 7227) o The Special Economic Zone Act of 1995 (RA 7916), as amended o Other Special Economic Zone Acts - Zamboanga City Special Economic Zone Act of 1995 (RA 7903) - Cagayan Special Economic Zone Act of 1995 (RA 7922) - Aurora Pacific Economic Zone and Freeport Act of 2007 (RA 9490 as amended by RA 10083) - Freeport Area of Bataan Act of 2009 (RA 9728) o Regional or Area Headquarters, Regional Operating Headquarters and o Regional Warehouses Act (RA 8756) o Export Development Act of 1994 (RA 7844) o • Tourism Act of 2009 (RA 9593)
Qualification for availment of incentives	Filipino and Non-Filipino investors may generally avail of the incentives under any of the above laws provided that the project is registered with the concerned government agency authorized to grant and administer such incentives. The Special Economic Zone Authorities grant location specific incentives. In such cases, a company has to locate its business operations in the pertinent economic zone to qualify for registration with incentives under the governing incentive law. Incentive Promotion Agencies generally align their respective rules with the provisions of the Executive Order (EO) No. 226 otherwise known as the Omnibus Investments Code of 1987. They also defer to the policies and procedures adopted by the BOI in implementing the incentives. The BOI's Investment Priorities Plan (IPP) provides the list of priority areas of investments.

Omnibus Investments Code of 1987
(Executive Order No. 226, as amended)

EO No. 226	The Omnibus Investments Code of 1987, as amended, incorporates the basic laws on investments, clarifying and harmonizing their provisions to encourage and guide domestic and foreign investors.
	Qualified proponents who will invest in priority areas of activity listed in the latest Investment Priorities Plan (IPP) can qualify for incentives. The IPP is the government's blueprint of priority economic activities that qualify for fiscal incentives
Equity ownership requirement	There are no restrictions on the extent of foreign ownership of export oriented and/or pioneer enterprise that will engage in the activities listed in the IPP, save those provided under the 1987 Philippine Constitution and the Foreign Investment Act (FIA) under RA 7042, as amended. In general, the minimum equity requirement to finance the project applied for registration with the Board of Investments (BOI) shall be equal to 25% of the project cost. Equity could be in the form of paid-up capital or retained earnings that has been converted into paid-up capital of the applicant firm. Excluded from the equity requirement are projects with good track record in implementation, projects of publicly-listed companies, and projects not entitled to ITH.
Incentives under EO No. 226	*Tax Exemptions* a. Income Tax Holiday (ITH) i. BOI registered enterprises shall be exempt from the payment of income tax reckoned from the approved target or actual date of commercial operations, whichever comes first, but in no case earlier than the date of registration, as follows: • Six (6) years for new projects granted pioneer status;

	• Six (6) years for projects located in Less Developed Areas (LDAs), regardless of status (pioneer or non-pioneer) or type of projects (new or expansion); • Four (4) years for new projects granted non-pioneer status; and • Three (3) years for expansion and modernization projects. ii. New registered pioneer and non-pioneer enterprises, expansion enterprises granted pioneer incentives under Article 40 of EO 226, and those located in LDAs may be granted one (1) bonus year of ITH incentive for each of the following criterion: • Capital Equipment to Labor Ratio Criterion. The ratio of derived dollar cost of capital equipment to the average number of direct labor does not exceed US$10,000; or • Net Foreign Exchange Earnings/Savings Criterion. The net foreign exchange savings or earnings for the first 3 years of commercial operation should at least be US$500,000; or • Indigenous Raw Material Cost Criterion. The indigenous raw materials used in the manufacture or processing of the registered product is at least 50% of the total cost of raw materials for each of the taxable year beginning the start of commercial operation up to when the extension using this criterion was applied for. In no case shall a registered firm avail of ITH for a period exceeding 8 years. b. Duty free importation of capital equipment, spare parts and accessories, subject to conditions.

	A registered enterprise with a bonded manufacturing warehouse shall be exempt from customs duties and national internal revenue taxes on its importation of required supplies/spare parts for consigned equipment or those imported with incentives. The availment period shall not exceed 10 years from date of registration. c. Exemption from wharfage dues and export tax, duty, impost, and fees. d. Tax and duty-free importation of breeding stocks and genetic materials. *Tax Credits* a. Tax credit on the purchase of domestic breeding stocks and genetic materials A tax credit equivalent to 100% of the value of national internal revenue taxes and customs duties that would have been waived on the purchase of local breeding stocks and genetic materials within ten (10) years from the date of registration or commercial operations. b. Tax credit on raw materials and supplies Tax credit equivalent to the national internal revenue taxes and duties paid on raw materials, supplies, and semi-manufactured products used in the manufacture of export products and forming part thereof. *Additional Deductions from Taxable Income* a. Additional deduction for labor expense (ADLE) For the first 5 years from date of registration, a registered enterprise shall be allowed an additional deduction from taxable income equivalent to 50% of the wages of additional skilled and unskilled workers in the direct labor force. This incentive shall be granted provided that the enterprise meets a prescribed capital to labor ratio and shall not be availed of simultaneously with ITH.

	This additional deduction shall be doubled or become 100% if the activity is located in a Less Developed Area (LDA). The privilege, however, is not granted to mining and forestry-related projects as they would naturally be located in certain areas to be near their source of raw materials. ADLE cannot be simultaneously availed of with ITH. b. Additional deduction for necessary and major infrastructure work. A registered enterprise locating in LDAs or in areas deficient in infrastructure, public utilities, and other facilities may deduct from taxable income an amount equivalent to the expenses incurred in the development of necessary and major infrastructure works. *Zero-rated VAT* The BOI endorses to the BIR two types of zero percent (0%) VAT applications: a. For purchases of raw materials and supplies used in the manufacture and which form part of the registered export product; and b. For purchases of goods, services, or properties of firms exporting one hundred percent (100%) of their product. Motor vehicles are not covered, except specialized vehicles such as backhoe, forklift, etc. *Non-fiscal Incentives* a. Employment of foreign nationals A registered enterprise may be allowed to employ foreign nationals in supervisory, technical, or advisory positions for 5 years from the date of registration. The position of president, general manager, and treasurer of foreign-owned registered enterprises or their equivalent shall not, however, be subject to the above limitations.

	b. Simplification of customs procedures for the importation of equipment, spare parts, raw materials, and supplies and exports of processed products. c. Importation of consigned equipment for a period of 10 years from the date of registration, subject to posting of a re-export bond. d. The privilege to operate a bonded manufacturing/trading warehouse subject to Customs rules and regulations.

Bases Conversion and Development Act of 1992
(Republic Act No. 7227, as amended)

RA No. 7227	The Bases Conversion and Development Act's objective of the Act is to accelerate the sound and balanced conversion and development of the former United States military bases into special economic zones in order to promote the economic and social development of Central Luzon in particular, and the country in general.
Incentives under RA No. 7227	The fiscal and non-fiscal incentives granted under either BCDA, SBMA, or CDC are basically the same, as follows: *Fiscal Incentives* a. A final tax of 5% on gross income earned shall be paid in lieu of all local and national taxes. Gross income refers to gross sales or gross revenues derived from the business activity within the zone, net of sales discounts and sales returns and allowances and less cost of sales, cost of production or direct cost of services. b. Tax and duty-free importation of raw materials and capital equipment *Non-fiscal Incentives* a. Permanent residency status for investors, their spouses and dependent children under twenty-one (21) years of age, provided they have continuing investments of not less than US$250,000.

	b. Employment of foreign nationals.

The Special Economic Zone Act of 1995
(Republic Act No. 7916, as amended)

RA No. 7916	RA No. 7916 was enacted on February 24, 1995 to encourage and promote the establishment and development of economic zones or "ecozones" in identified and selected areas in the country as a means to achieve sound and balanced industrial, economic, and social development. It also created the Philippine Economic Zone Authority (PEZA) as the agency mandated to enforce the provisions and objectives of the law.
	Under the current PEZA policies, the following may be eligible for incentives: o Export manufacturing o IT Service export o Tourism o Medical tourism o Agro-industrial export manufacturing o Agro-industrial bio-fuel manufacturing o Logistics and warehousing services1 o Ecozone development/operation • Manufacturing economic zone development/operation • IT park development/operation • Tourism economic zone development/operation • Medical tourism economic zone development/operation • Agro-industrial economic zone development/operation • Retirement economic zone development/operation o Facilities providers • Facilities for manufacturing enterprises • Facilities for IT enterprises • Retirement facilities o Utilities
Incentives under RA No. 7916	PEZA-registered enterprises located within the ecozones administered by PEZA may avail of the following incentives and benefits: o All incentives under EO 226 which include ITH;

	○ Preferential final tax of 5% of gross income in lieu of all national and local taxes, after the ITH period; ○ Tax and duty-free importation of capital equipment, spare parts, raw materials, and supplies, which are needed in the registered activity; and ○ Tax credits for exporters using local materials as inputs under RA 7844 or the Export Development Act of 1994. An amount equivalent to one-half (1/2) of the value of training expenses incurred in developing skilled or unskilled labor or for managerial or other management development programs incurred by a PEZA firm can be deducted from the national government's share of 3% (out of 5%) final tax.

Other special economic zones

Other special economic zones	Aside from the ecozones under PEZA, the Subic area under SBMA, and the Clark area under CDC, there are four other special economic zones established under special laws. These are: ○ Zamboanga City Special Economic Zone (RA 7903); ○ Cagayan Special Economic Zone and Freeport (RA 7922); ○ Aurora Economic Zone (RA 9490) which later became the Aurora Pacific Economic and Freeport Zone in 2010 (RA 10083); and ○ Freeport Area of Bataan (RA 9728).
Incentives available to locators in these ecozones	Companies registered with and located within the territorial boundaries of these ecozones shall be entitled to fiscal and non-fiscal benefits similar to those available to PEZA-registered enterprises.

The Tourism Act of 2009
(Republic Act No. 9593)

RA No. 9593	RA No. 9593 was enacted to establish and develop Tourism Enterprise Zones (TEZs) in identified and selected areas in the country for the purpose of developing the Philippine Tourism industry as an engine of socioeconomic growth. The law created the Tourism Infrastructure and Enterprises Zone Authority (TIEZA) which is tasked to designate, regulate, and supervise the TEZs, and exercises sole and exclusive jurisdiction in the grant and administration of incentives provided under the Act. The TIEZA is an attached agency to the Department of Tourism and is under its supervision in terms of policy and programs.
Types of enterprises/activities that are eligible for incentives under RA 9593	a. Primary Tourism Enterprises, which refer to facilities and services that are directly related to tourism such as, but not limited to the following: o Travel and tour services; o Inbound travel agencies and tour operators, local tour operators, ecotour operators, and tour guides; o Tourist transport services whether for land, sea, and air transport exclusively or majority of its seats are for tourist use, including airport taxis and tourist drivers; o Accommodation establishments such as but not limited to hotels, resorts, apartment hotels, tourist inns, motels, pension houses, private homes used for homestay, ecolodges, condotels, serviced apartments, and bed and breakfast facilities; o Hotel and tourism estate management services; o Meetings, incentives, conventions and exhibition organizers and facilities; o Sports and recreational facilities such as but not limited to dive shops, amusement parks, and adventure and ecotourism facilities; and o Foreign exchange dealers and such enterprises as may be identified by the Secretary, after due consultation with concerned sectors. b. Secondary Tourism Enterprises, which refer to facilities and services that may be related to tourism such as, but not limited to the following: o Restaurants; o Specialty shops and department stores;

	○ Sports facilities and recreational centers such as museums and galleries, theme parks, zoos; ○ Health and wellness facilities such as but not limited to spas, tertiary hospitals, ambulatory clinics, and medical concierge; ○ Rest areas in gas stations; ○ Agri-tourism farms and facilities; ○ Tourism training centers or institutes, including tourism trainers; ○ Outbound travel agencies; and ○ Other enterprises as may be identified by the Secretary after due consultation with concerned sectors.
Incentives under RA No. 9593	Registered TEZ operators and enterprises are entitled to the following fiscal and non-fiscal incentives. • Income Tax Holiday (ITH) ○ New enterprises in Greenfield and Brownfield Tourism Zones shall be entitled to six (6) years ITH from start of business operations, which may be extended up to a maximum of six (6) years if the enterprise undertakes substantial expansion or upgrade prior to the expiration of its first six (6) years ITH. ○ An existing enterprise in a Brownfield Zone may avail of a maximum of six (6) years non-extendible ITH if it undertakes extensive expansion or upgrade of facilities. ○ Net operating losses for any taxable year immediately preceding the current taxable year which had not been previously offset as deduction from gross income, may be carried over as deduction from gross income for the next six (6) consecutive years immediately following the year of the loss. • Gross Income Taxation ○ Final tax of 5% on gross income earned in lieu of all other national and local taxes, license fees, imposts and assessments, except real estate taxes, and such fees as may be imposed by TIEZA, after the ITH. ○ Exemption of 100% from all taxes and customs duties on importation of capital investment and

  equipment that will be used directly, actually, and exclusively by the enterprise in its registered activity.
  - Exemption from customs duties and national taxes on importation of transportation equipment and accompanying spare parts that are reasonably needed and will be exclusively used by the accredited enterprise, provided they are not manufactured locally in sufficient quantity, of comparable quality, and at reasonable prices.

- Goods and Services

  - Exemption of 100% from all taxes and customs duties on importation of goods actually consumed in the course of services actually rendered by or through the registered enterprise, excluding goods imported for the purpose of operating a wholesale or retail establishment in competition with the Duty-Free Philippines Corporation.
  - Tax credit equivalent to all national internal revenue taxes paid on all locally sourced goods and services directly or indirectly used by the registered enterprise within the TEZ.

- Social Responsibility Incentive

  - Tax deduction equivalent to a reasonable percentage, not exceeding fifty percent (50%), of the cost of environmental protection or cultural heritage preservation activities, sustainable livelihood programs for local communities, and other similar services.
  - Employment of foreign nationals in executive, supervisory, technical, and advisory positions for reasonable periods and under such terms as approved by TIEZA.
  - Special Investor's Resident Visa

    - A foreign national with a minimum investment of US$200,000 in a registered enterprise shall be entitled to a special investor's resident visa enabling the foreign national to reside in the Philippines while his or her investment subsists.

	▪ Working visas renewable every 2 years shall be issued to foreign personnel and other aliens possessing highly-technical skills, subject to certain conditions. o Foreign Currency Transactions ▪ Subject to appropriate rules and regulations of the Bangko Sentral ng Pilipinas, registered enterprises are guaranteed the right to repatriate entire proceeds of the liquidation of the foreign investment or remit earnings from foreign investment, in the currency in which the investment was originally made and at the exchange rate prevailing at the time of repatriation; and in the case of foreign loans and foreign obligations arising from technological assistance contracts, the right to remit at the exchange rate prevailing at the time of remittance such sums as may be necessary to meet the payment of interest and principal. o Requisition of Investment Protection from requisition of the property of the registered enterprise except in cases of war or national emergency, subject to payment of just compensation and repatriation of such compensation. o Lease and Ownership of Land ▪ Subject to conditions set forth under the Investor's Lease Act, lands and buildings in each TEZ may be leased to foreign investors for a period not exceeding fifty (50) years, renewable once for a period not more than twenty-five (25) years. ▪ Leasehold right acquired under long-term contracts may generally be sold, transferred, or assigned.
	Subject to certain conditions, tourism enterprises location outside the TEZ may also be entitled to the following incentives:

	○ Economic incentives found under existing laws such as the Omnibus Investment Code, the Foreign Investment Act, as amended, the Special Economic Zone Act, and the Bases Conversion and Development Act, among others; and ○ For existing accommodation facilities, six (6) years ITH for any significant expansion, renovation or upgrade of facilities, and tax and duty-free importation of necessary capital equipment.

Regional or Area Headquarters (RHQ), Regional Operating Headquarters (ROHQ) and Regional Warehouses (RW) Act (Republic Act No. 8756)

RA No. 8756	RHQ is an office whose purpose is to act as an administrative branch of a multinational company engaged in international trade which principally serves as a supervision, communications, and coordination center for its subsidiaries, branches, or affiliates in the Asia-Pacific Region and other foreign markets, and which does not earn or derive income in the Philippines. ROHQ refers to a foreign business entity which is allowed to derive income in the Philippines by performing qualifying services to its affiliates, subsidiaries, or branches in the Philippines, in the Asia-Pacific Region and in other foreign markets. Such services are general administration and planning, business planning and coordination, sourcing and procurement of raw materials and components, corporate finance advisory services, marketing control and sales promotion, training and personnel management, logistic services, research and development services and product development, technical support and maintenance, data processing and communication, and business development.
Incentives under RA No. 8756	The incentives available are as follows: For RHQs ○ Exemption from income tax ○ Exemption from VAT ○ VAT zero-rating on their purchase or lease of goods, property, and services

	For ROHQs o A special tax rate of 10% on taxable income For RWs o Tax and duty-free importation of warehouse equipment, as well as spare parts, components, semi-finished products, raw materials, and other items which are to be re-exported abroad o Exemption from the maximum storage period of two (2) years under the Tariff and Customs Code of the Philippines (TCCP) of the imported articles entered for warehousing Common incentives for RHQs and ROHQs o Exemption from all kinds of local taxes, fees, or charges imposed by local government units, except real property tax on land improvements and equipment o Tax and duty-free importation of equipment and materials for training and conferences o Importation of new motor vehicles, subject to the payment of taxes and duties o Various incentives to expatriate employees, such as: • A preferential 15% tax rate on gross income. Filipino employees occupying the same position as their alien colleagues shall also be entitled to the same tax treatment provided all the following conditions are met: i. The Filipino employee occupies a managerial or technical position and actually exercises the managerial or technical functions pertaining to said position; ii. The Filipino employee must have received or is due to receive under a contract of employment, a gross annual taxable compensation of at least P975,000.00; and iii. The Filipino employee must be exclusively working for the RHQ or ROHQ as a regular employee and not just consultant or contractual personnel. • Special multiple entry visas with a three-year validity period for the foreign personnel, their spouses and

	unmarried children under twenty-one (21) years of age. • Tax and duty-free importation of personal and household effects. • Exemption from travel tax and specific immigration fees and requirements, subject to certain conditions.

Export Development Act of 1994
(Republic Act No. 7844)

RA No. 7844	The Export Development Act (EDA) or RA 7844 was issued to promote and develop the Philippine export industry as a means to achieve the country's economic goals of sustainable agri-industrial development, increased employment, and enhanced incomes.
Incentives under the RA No. 7844	The following are the incentives granted to exporters under the EDA: o Exemption from Presidential Decree 1853 (requiring 100% deposit of duties due on importation upon opening of Letter of Credit), provided that the importation shall be used for the production of goods and services for export; and o Tax credit for incremental export performance. The tax credit for increase in current export revenues shall be computed as a percentage to be applied on the incremental export revenue converted to pesos at current rate. The percentages or rates are as follows: For the first 5% increase in annual export revenue over the previous year - 2.5% For the next 5% increase - 5.0% For the next 5% increase - 7.5% In excess 10% This incentive is not available to exporters enjoying ITH or VAT exemption, exporters engaged in the re-exportation of imported goods, or exporters whose exports have local value-added of 10% and below.

	In addition, exporters registered with the BOI, PEZA, SBMA, CDC, or other investment promotion agencies may also avail of the incentives granted by such agencies.

The content is based on information current as of December 31, 2020. Changes to the laws and other applicable rules may be proposed. Therefore, readers should contact MTF to obtain further information.

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