

IMPLEMENTING RULES AND REGULATIONS OF TITLE XIII OF REPUBLIC ACT NO. 8424 OTHERWISE KNOWN AS THE “NATIONAL INTERNAL REVENUE CODE OF 1997”, AS AMENDED BY REPUBLIC ACT NO. 11534 OR THE “CORPORATE RECOVERY AND TAX INCENTIVES FOR ENTERPRISES (CREATE) ACT”

Pursuant to Section 21 of Republic Act No. 11534, entitled “AN ACT REFORMING THE CORPORATE INCOME TAX AND INCENTIVES SYSTEM, AMENDING FOR THE PURPOSE SECTIONS 20, 22, 25, 27, 28, 29, 34, 40, 57, 109, 116, 204 AND 290 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND CREATING THEREIN NEW TITLE XIII, AND FOR OTHER PURPOSES,” the Secretary of Finance and the Secretary of Trade and Industry, after consultations with the Commissioner of Internal Revenue, the Board of Investments, and other Investment Promotion Agencies hereby promulgate the following Implementing Rules and Regulations (IRR).

**PART I
GENERAL PROVISIONS**

RULE 1. Scope and Definition of Terms

SECTION 1. Title. These rules and regulations shall be referred to as the “Implementing Rules and Regulations of Title XIII of the National Internal Revenue Code of 1997, as amended”.

SECTION 2. Scope and Coverage. These rules shall apply to:

- a. All existing investment promotion agencies (IPAs) as defined in the Act or related laws with respect to the administration and grant of tax incentives unless otherwise specifically exempted from the coverage thereof;
- b. All newly registered projects or activities including qualified expansion projects or activities of export enterprises and domestic market enterprises, under the Strategic Investment Priority Plan;
- c. Registered enterprises, projects, or activities currently registered with IPAs and enjoying incentives prior to the effectivity of the Act;
- d. Other government agencies administering tax incentives with respect to the administration and grant of tax incentives and other registered enterprises availing of tax incentives; and
- e. Government-owned and/or –controlled corporations (GOCCs), government instrumentalities (GIs), government commissaries, and state universities and colleges (SUCs) that were granted tax subsidies under the tax expenditure fund of the Annual General Appropriations Act.

SECTION 3. EXTENT OF AUTHORITY TO GRANT TAX INCENTIVES. The Fiscal Incentives Review Board, or the IPAs mentioned under Rule 1, Section 4(P) under a delegated authority from the Fiscal Incentives Review Board, shall grant tax incentives to registered business enterprises only

to the extent of their approved registered project or activity under the Strategic Investment Priority Plan.

SECTION 4. *Definition of terms.* – For purposes of the IRR, the following terms shall mean:

- (A) ***“Act” or “Code”*** refers to Republic Act No. 8424 otherwise known as the “National Internal Revenue Code of 1997” as amended by Republic Act No. 11534, otherwise known as or the “Corporate Recovery and Tax Incentives for Enterprises Act” or “(CREATE”) Act”;
- (B) ***“Annual Benefits Report (ABR)”*** refers to the detailed report on benefits which shall include data such as, but not limited to, the approved and actual amount of investments, approved and actual employment level and job creation including information on quality of jobs and hiring of foreign and local workers, approved and actual exports and imports, domestic purchases, profits and dividend payout, all taxes paid, withheld and foregone;
- (C) ***“Annual Tax Incentives Report (ATIR)”*** refers to the detailed report on tax incentives availed in a taxable year. The report shall contain activity- or project-level data, such as but not limited to, income-based tax incentives, VAT exemptions and zero-rating, customs duty exemptions, deductions, credits or exclusions from the income tax base, and exemptions from local taxes;
- (D) ***“Board”*** refers to the board proper of the Fiscal Incentives Review Board (FIRB);
- (E) ***“Capital equipment”*** refers to machinery, equipment, major components thereof, tools, devices, applications or apparatus, which are directly or reasonably needed in the registered project or activity of the registered enterprise;
- (F) ***“Certificate of Authority to Import (CAI)/Admission Entry”*** refers to the document issued by the IPA or FIRB as proof of entitlement for tax and duty free importation which shall contain the list of capital equipment, raw materials, spare parts or accessories to be imported. Prior approval of the FIRB is required before the issuance of CAI/import permit to registered projects or activities with investment capital of over one billion pesos (P1,000,000,000.00);
- (G) ***“Certificate of Entitlement to Tax Incentives (CETI)”*** refers to the document issued by the concerned IPA in a form prescribed by the FIRB, upon application by the RBE, as proof of entitlement for incentives. Prior approval of the FIRB is required before the issuance of CETI to registered projects or activities with investment capital of over one billion pesos (P1,000,000,000.00);
- (H) ***“Certificate of Entitlement to Subsidy (CES)”*** refers to the document issued by the FIRB certifying the amount of tax subsidy that is granted in favor of national government agencies, GOCCs, GIs, SUCs, and other government entities as may be provided under the annual General Appropriations Act;
- (I) ***“Cost-benefit analysis (CBA)”*** refers to the systematic evaluation of the total costs and benefits of granting fiscal incentives. The analysis shall cover direct, indirect, and opportunity costs and benefits;
- (J) ***“Direct local employment”*** refers to the full and decent employment of Filipinos by registered business enterprises under an employer-employee relationship to perform

functions that are directly related to the production of goods or performance of services under the registered project or activity;

- (K) **“Domestic input”** refers to purchases of locally-manufactured goods or locally produced raw materials or domestically outsourced services known as services embedded in manufacturing that are used directly in the production of goods under the registered project or activity. In the case of locally manufactured goods, fifty percent (50%) of the value-added of the said good should likewise be locally produced or manufactured;
- (L) **“Domestic market enterprise”** refers to any enterprise registered with an IPA other than export enterprise;
- (M) **“Export enterprise”** refers to any individual, partnership, corporation, Philippine branch of a foreign corporation, or other entity organized and existing under Philippine laws and registered with an IPA to engage in manufacturing, assembling or processing activity, and services such as information technology (IT) activities and business process outsourcing (BPO), and resulting in the direct exportation, and/or sale of its manufactured, assembled or processed product or IT/BPO services to another registered export enterprise that will form part of the final export product or export service of the latter, of at least seventy percent (70%) of its total production or output;
- (N) **“Freeport zone”** refers to an isolated and policed area adjacent to a port of entry, which shall be operated and managed as a separate customs territory to ensure free flow or movement of goods, except those expressly prohibited by law, within, into, and exported out of the freeport zone where imported goods may be unloaded for immediate transshipment or stored, repacked, sorted, mixed, or otherwise manipulated without being subject to import duties. However, movement of these imported goods from the free-trade area to a non-free trade area in the country shall be subject to all applicable internal revenue taxes and duties: *Provided*, That for the freeport to qualify as a separate customs territory, a freeport shall have a permanent customs control or customs office at its perimeter;
- (O) **“Investment capital”** refers to the value of investment indicated in Philippine currency, that shall be used to carry out a registered project or activity, such as pre-operating expenses, cost of land and land improvements, buildings, leasehold improvements, working capital, and machinery and equipment, inventory and other current and non-current assets;
- (P) **“Investment promotion agencies (IPAs)”** refer to government entities created by law, executive order, decree or other issuance, in charge of promoting investments, granting and administering tax and non-tax incentives, and overseeing the operations of the different economic zones and freeports in accordance with their respective special laws. These include the Board of Investments (BOI), Regional Board of Investments - Autonomous Region in Muslim Mindanao (RBOI-ARMM), Philippine Economic Zone Authority (PEZA), Bases Conversion and Development Authority (BCDA), Subic Bay Metropolitan Authority (SBMA), Clark Development Corporation (CDC), John Hay Management Corporation (JHMC), Poro Point Management Corporation (PPMC), Cagayan Economic Zone Authority (CEZA), Zamboanga City Special Economic Zone Authority (ZCSEZA), Phividec Industrial Authority (PIA), Aurora Pacific Economic Zone and Freeport Authority (APECO), Authority of the Freeport Area of Bataan (AFAB), Tourism Infrastructure and Enterprise Zone Authority (TIEZA), and all other similar existing authorities or that may be created by law unless otherwise specifically exempted from the coverage of the Code;

- (Q) **“Metropolitan areas”** refer to Metro Cebu and Metro Davao or those local government units (LGUs) which are later qualified or grouped as such by the National Economic and Development Authority (NEDA) or through laws or executive issuances;
- (R) **“Other government agencies (OGA) administering tax incentives”** refer to government agencies or instrumentalities other than IPAs which register or administer tax incentives of any kind to any specific entities or class of persons pursuant to any law;
- (S) **“Other registered entities (ORE)”** refer to any individual, partnership, organization, corporation, Philippine branch of a foreign corporation, or other entity incorporated or organized and existing under Philippine laws, and registered with other government agencies administering tax incentives;
- (T) **“Qualified capital expenditure”** refers to purchases of capital goods with a useful life of more than one (1) year acquired for the entity’s production of goods and services to be directly used in the registered project or activity of the registered business enterprise;
- (U) **“Qualified Expansion Project”** refers to a project of an existing enterprise that would involve the installation of additional facilities or equipment, or infusion of additional investment that will result in increase in capacity of the same or similar activity within the same existing plant or facilities of the enterprise, and additional benefits to the economy. It shall include modernization and rehabilitation resulting in the upgrade of the registered product or service. The resulting increase in capacity or upgrade of the registered product or service shall be determined in the SIPP.
- (V) **“Raw material”** refer to the costs of direct materials or component parts that go directly into a final manufactured product or produced by the registered project or activity.
- (W) **“Registered business enterprise”** refers to any individual, partnership, corporation, Philippine branch of a foreign corporation, or other entity organized and existing under Philippine laws and registered with an IPA excluding service enterprises such as those engaged in customs brokerage, trucking or forwarding services, janitorial services, security services, insurance, banking, and other financial services, consumers’ cooperatives, credit unions, consultancy services, retail enterprises, restaurants, or such other similar services, as may be determined by the FIRB, irrespective of location, whether inside or outside the zones, duly accredited or licensed by any of the IPAs and whose income delivered within the economic zones shall be subject to taxes under the National Internal Revenue Code of 1997, as amended;
- (X) **“Research and development”** refers to experimental or other related projects or activities:
- (1) whose outcome cannot be known or determined in advance on the basis of current knowledge, information or experience, but can only be determined by applying a systematic progression of work:
 - a. based on principles of established science; and
 - b. proceeds from hypothesis to experiment, observation and evaluation, and leads to logical conclusions; and
 - (2) that are conducted for the purpose of generating new knowledge, including new knowledge in the form of new or improved materials, products, devices, processes or services;

- (Y) **“Revenue collecting agency (RCA)”** refers to the Bureau of Internal Revenue (BIR) or the Bureau of Customs (BOC);
- (Z) **“Sophisticated”** refers to the state when a product or service requires a high level of technology, human capital, competencies or know-how, and infrastructure to be produced or offered;
- (AA) **“Sophistication”** refers to the level of technology, human capital, competencies or know-how, and infrastructure required for a product or service to be offered;
- (BB) **“Source document”** refers to input materials and documents reasonably needed by information technology (IT) and IT-enabled industries such as books, directories, magazines, newspapers, brochures, pamphlets, medical records or files, legal records or files, instruction materials, and drawings, blueprints, or outlines;
- (CC) **“Special economic zone” or “Ecozone”** refers to a selected area, which shall be operated and managed as a separate customs territory to ensure free flow or movement of goods, except those expressly prohibited by law, that is highly developed or has the potential to be developed into an agro-industrial, industrial, information technology, or tourist/recreational area, whose metes and bounds are fixed or delimited by presidential proclamations and within a specific geographical area which includes industrial estates (IES), export processing zones (EPZS), ICT parks and centers, and free trade zones: *Provided*, That for the ecozone to qualify as a separate customs territory, an ecozone shall have a permanent customs control or customs office at its perimeter: *Provided, However*, That areas where mining extraction is undertaken shall not be declared as an ecozone: *Provided, Further*, That vertical economic zones, such as, but not limited to, buildings, selected floors within buildings, and selected areas on a floor, need to comply with the minimum contiguous land area as determined by the FIRB;
- (DD) **“Strategic Investment Priority Plan (SIPP)”** refers to the plan prepared by the BOI, in coordination with the FIRB, IPAs, and other government agencies administering tax incentives, and the private sector, which is approved by the President, and contains the priority projects or activities, scope and coverage of location and industry tiers, recommendations for non-fiscal support and corresponding specific activities wherein investments are to be encouraged, and other information, analyses, data, guidelines, or criteria as the BOI may deem appropriate;
- (EE) **“Tax subsidy”** refers to subsidy given to national government agencies, GOCCs and GIs, SUCs, and other government entities as may be provided under the annual General Appropriations Act, in lieu of payment of taxes and customs duties, chargeable against tax expenditures fund; and
- (FF) **“Training”** refers to courses, curricula, certifications or modules provided to Filipino employees that are directly related to the production of goods or performance of services under the registered project or activity and that are of a technical nature, which shall develop or improve the specific skills or practical knowledge of the employee especially in the mechanical, industrial art, scientific field or practical science of a particular position or job function in the registered project or activity, or in preparation for enhancing the value chain.

PART II

TAX AND DUTY INCENTIVES

RULE 2. Tax and Duty Incentives

SECTION. 1. *Income Tax Holiday (ITH)*. – The ITH shall be limited to the income generated by an RBE from a registered project or activity.

SECTION. 2. *Special Corporate Income Tax (SCIT)*. – The SCIT shall be equivalent to a tax rate of five percent (5%) based on the gross income earned, in lieu of all national and local taxes.

Existing rules on the allocation of the 5% SCIT among the national government, LGUs and the IPAs under special laws governing the latter shall be observed.

For export enterprises governed by special laws which do not provide for allocation, the 5% SCIT based on the gross income shall be paid and remitted as follows:

- a. Three percent (3%) to the National Government;
- b. Two percent (2%) which shall be directly remitted by the registered enterprises to the treasurer's office of the municipality or city where the enterprise is located.

For this purpose, "gross Income earned" refers to gross sales or gross revenues derived from the registered project or activity, net of sales discounts, sales return and allowances and minus costs of sales or direct costs but before any deduction is made for administrative expenses or incidental losses during a given taxable period.

Only the following shall be considered as direct cost for purposes of computing the total five percent (5%) tax rate imposed:

- a. Direct salaries, wages or labor expenses;
- b. Production supervision salaries;
- c. Raw materials used in the manufacture of products;
- d. Goods in process (intermediate goods);
- e. Finished goods;
- f. Supplies and fuels used in production;
- g. Depreciation of machinery, equipment and building directly and exclusively used in the rendition/production of registered activity, and of that portion of the building owned or constructed that is directly and exclusively related in the rendition/production of the registered activity;
- h. Rent and utility charges associated with building, equipment and warehouses, or handling of goods used directly and exclusively in the rendition/production of registered activity;
- i. Financing charges associated with fixed assets used directly and exclusively in the registered activity the amount of which were not previously capitalized;
- j. Service supervision salaries; and
- k. Direct materials, supplies used;

Existing rules on the allocation of the 5% SCIT among the national government, LGUs and the IPAs under special laws governing the latter shall be observed.

SECTION. 3. *Enhanced Deductions.* – Registered business enterprises may be granted enhanced deductions in addition to the allowable ordinary and necessary deductions under Section 34 (A) to (J) of the Tax Code.

Export enterprises may, at their option, avail of the enhanced deductions or the SCIT rate. In no case, however, shall enhanced deductions be granted simultaneously with the special corporate income tax.

The following may be allowed as deductions:

(A) Additional depreciation allowance of the assets acquired for the production of goods and services (qualified capital expenditure). From the total depreciable cost of the assets that are directly related to the registered enterprise's production of goods and performance of services (qualified capital expenditure), a registered business enterprise may be allowed to claim an additional depreciation allowance of:

- (1) Ten percent (10%) for buildings; and
- (2) Twenty percent (20%) for machinery and equipment.

(B) Additional Deduction on Labor Expense. Registered business enterprises shall be entitled to an additional deduction from the taxable income of fifty percent (50%) of the total labor expense in the taxable year. The additional deduction shall not include salaries, wages, benefits and other personnel costs incurred for managerial, administrative, indirect labor and support services.

(C) Additional Deductions on Research and Development Expenses. Registered business enterprises shall be allowed to claim an additional deduction of one hundred percent (100%) on the research and development expense that are directly related to the registered project or activity of the entity and shall be limited to local expenditure incurred for salaries of Filipino employees and consumables and payments to local research and development organizations.

(D) Additional Deduction on Training Expense. Registered business enterprise shall be entitled to an additional deduction from the taxable income of one hundred percent (100%) of the total expense on trainings conducted, as approved by the IPAs based on the SIPP, given to the Filipino employees engaged directly in the registered business enterprise's production of goods and services.

To ensure that only technical trainings are covered, the following shall not be covered:

- (1) Onboarding workshops for newly-hired employees;
 - (2) Team building activities, field trips and tours;
 - (3) Executive education and leadership programs for senior management and c-suite;
 - (4) Professional and legal trainings such as sexual harassment, discrimination and fraud;
 - (5) Safety trainings such as evacuation plans, fire drills, workplace violence and first aid.
- Other safety trainings that are directly related to the performance of core job functions may be covered by the incentives as long as it is part of a technical training program; and

(6) Quality trainings such as ISO processes and standards that are not related to the performance of an employee's core job functions.

(E) Additional Deduction on Domestic Input Expense. The registered business enterprise shall be allowed to claim an additional deduction of fifty percent (50%) on domestic inputs that are directly related to and actually used in the registered project or activity of the registered business enterprise.

(F) Additional Deduction on Power Expense. From the total power costs incurred in the production of the registered project or activity, the registered business enterprise shall be allowed to claim an additional deduction equal to fifty percent (50%) of the total power costs utilized for the registered project or activity.

(G) Deduction for reinvestment allowance to manufacturing industry. The reinvestment of undistributed profit or surplus of a registered business enterprise engaged in manufacturing, in any of the projects or activities listed in the SIPP shall be allowed as a deduction, to a maximum of fifty percent (50%), from its taxable income within a period of five (5) years from the time of such reinvestment.

(H) Enhanced Net Operating Loss Carry Over (NOLCO). Net operating loss of the registered project or activity during the first three (3) years from start of commercial operations can be deducted which had not been previously offset as deduction from gross income may be carried over as deduction from gross income within the next five (5) consecutive taxable years, immediately following the year of such loss.

The SIPP shall provide the requirements and conditions for a registered project or activity to be granted the ED from the start of commercial operations under this Rule III: *Provided, That*, the Secretary of Finance, upon recommendation of the Commissioner of Internal Revenue, shall issue revenue rules and regulations on the process to avail of enhanced deductions.

SECTION. 4. Customs Duty Exemption on Importation of Capital Equipment, Raw Materials, Spare Parts, or Accessories. – The importation of capital equipment, raw materials, spare parts, and accessories made by RBEs shall be exempt from custom duties, *provided, that* the following conditions are complied with:

(A) **Direct and Exclusive Use.** The duty exemption shall only apply to the importation of capital equipment, raw materials, spare parts, or accessories directly and exclusively used in the registered project or activity by RBEs.

(B) The capital equipment, raw materials, spare parts, or accessories:

- (1) are directly and reasonably needed by the RBE;
- (2) will be used exclusively in and as part of the direct cost of the registered project or activity of the RBE; and
- (3) are not produced or manufactured domestically in sufficient quantity or of comparable quality and at reasonable prices. *Provided*, that for a period of one year from the issuance of this IRR, the CAI/admission entry shall be used to satisfy this condition. The IPA shall furnish the DTI with copies of the issued CAI/admission entry every 5th day of the month. After the expiration of the one year period, the IPAs shall secure from the DTI the Certificate of Non-Local Availability in compliance with this condition.

(C) **Prior approval.** The approval of the IPA through the CAI/admission entry must be

obtained by the RBE prior to the importation of the goods.

- (D) **Sale, Transfer, or Disposition.** Within the first five (5) years from date of importation, the RBE shall secure the approval of the concerned IPA before the sale, transfer, or disposition of the capital equipment, raw materials, spare parts, or accessories which were granted customs duty exemption hereunder. Provided that the sale, transfer, or disposition of the capital equipment, raw materials, spare parts, or accessories within (5) years from date of importation shall require the payment of duties based on the net book value of the capital equipment, raw materials, spare parts, or accessories. The sale, transfer, or disposition thereof shall be allowed only under the following circumstances
- (a) If made to another enterprise availing customs duty exemption on imported capital equipment, raw materials, spare parts, or accessories for its direct and exclusive use;
 - (b) If made to another enterprise not availing of duty exemption on imported capital equipment, raw materials, spare parts, or accessories, upon payment of any taxes and duties due on the net book value of the capital equipment, raw materials, spare parts, or accessories to be sold;
 - (c) Exportation of capital equipment, raw materials, spare parts, accessories, source documents, or those required for pollution abatement and control;
 - (d) Proven technical obsolescence of the capital equipment, raw materials, spare parts, or accessories; or
 - (e) If donated to the Technical Education and Skills Development Authority (TESDA), SUCs, or the Department of Education (DepEd) and Commission on Higher Education (CHED)-accredited schools; provided that the donation shall be exempt from import duties and taxes, including donor's tax. After five (5) years from date of importation, the RBE shall notify the concerned IPA prior to the sale, transfer, or disposition of the capital equipment, raw materials, spare parts, or accessories.
- (E) **Solidary Liability.** If the RBE sells, transfers, or disposes the aforementioned imported items without prior approval of the concerned IPA, the RBE and the vendee, transferee, or assignee shall be solidarily liable to pay twice the amount of the duty exemption that should have been paid during its importation, without prejudice to any penalties or sanctions the concerned IPA may impose.
- (F) **Utilization in Non-Registered Project or Activity.** In the event that the aforementioned imported items will be used for a non-registered project or activity of the RBE at any time within the first five (5) years from date of importation, the RBE shall secure prior approval of the concerned IPA and pay the amount corresponding to the exempt duties on importation thereof.

For part-time utilization in a non-registered project or activity, the amount corresponding to the duties exempt on a specific capital equipment, raw materials, spare parts, or accessories shall be paid in proportion to its utilization for the non-registered project or activity. A report on the amount corresponding to the customs duty exemption on the specific capital equipment, raw materials, spare parts, or accessories utilized in a non-registered project or activity shall be submitted to the BIR.

SECTION. 5. Value-added Tax (VAT) zero-rating and exemption. – Only export sales of goods

and services by VAT-registered RBEs shall remain to be subject to zero percent (0%) VAT rate: Provided that, transactions falling under Section 106(A)(2)(a)(3), (4), and (5) and Section 108(B)(1) and (5) of the NIRC, as amended, shall be subject to the twelve percent (12%) VAT: Provided, further, that the VAT zero-rating and exemption shall only apply to purchases of goods and/or services directly and exclusively used in the registered project or activity of the RBE, during the period of registration of the said registered project or activity with the concerned IPA.

The direct and exclusive use in the registered project or activity refers to raw materials, inventories, supplies, equipment, goods, services and other expenditures necessary for the registered project or activity without which the registered project or activity cannot be carried out.

SECTION 6. *Other Incentives on Importation of Covid-19 Vaccines.* The importation of COVID-19 vaccines by RBEs shall be exempt from import duties, taxes and other fees, subject to the approval or licenses issued by the Department of Health (DOH) or the Food and Drug Administration (FDA).

For the tax incentives provided herein to apply, the COVID-19 vaccines must not be intended for resale or other commercial use and shall be distributed without any consideration from persons to be vaccinated. RBEs availing duty and tax exemption must declare that the vaccines shall be for the sole and exclusive use of such entities.

SECTION 7. *Other Incentives on Importation of Petroleum Products.* Persons who directly import petroleum products defined under Republic Act No. 8479, otherwise known as the Downstream Oil Industry Deregulation Act of 1998, for resale in the Philippine Customs Territory and/or in free zones as defined under Republic Act No. 10863, otherwise known as the Customs Modernization and Tariff Act (CMTA), shall not be entitled to the foregoing tax and duty incentives, and shall be subject to appropriate taxes imposed under this Code.

'Petroleum products' refers to products formed in the course of refining crude petroleum through distillation, cracking, solvent refining and chemical treatment coming out as primary stocks from the refinery such as, but not limited to: LPG, naphtha, gasolines, solvent, kerosenes, aviation fuels, diesel oils, fuel oils, waxes and petrolatums, asphalt, bitumens, coke and refinery sludges, or such refinery petroleum fractions which have not undergone any process or treatment as to produce separate chemically-defined compounds in a pure or commercially pure state and to which various substances may have been added to render them suitable for particular uses: Provided, That the resultant product contains not less than fifty percent (50%) by weight of such petroleum products.

Notwithstanding any law to the contrary, the importation of petroleum products by any person, including RBEs, shall be subject to the payment of applicable duties and taxes as provided under the CMTA, and this Code, respectively, upon importation into the Philippine customs territory and/ or into free zones as defined under the CMTA.

Provided, that within the period provided in the Code or CMTA, as the case may be, the importer can file claims for the refund of duties and taxes under Section 900 of the CMTA, and Sections 106(A)(2), 109(u) and 112 of the Code, respectively, for direct export of the petroleum products such as sale to international carriers or sea vessels engaged in international trade under Section 135 of the Code or indirect export of petroleum products, and/or other tax-exempt sales under the Customs Modernization and Tariff Act and other special laws.

Provided, further, that the importers who subsequently export fuel, subject to the appropriate rules of the fuel marking program, may apply for a refund of duties and taxes, as applicable under the CMTA.

Refund claims of VAT and excise tax referred to in this Section shall be filed at the BIR for verification and evaluation. Once approved, the claim shall be forwarded to the BOC for cash payment or issuance of a tax credit certificate, as applicable.

In cases where there is payment of duties, the provisions on duty drawback under the CMTA shall apply.

Crude oil that is intended to be refined at a local refinery, including the volumes that are lost and not converted to petroleum products when the crude oil actually undergoes the refining process, shall be exempt from payment of applicable duties and taxes upon importation:

Provided, that applicable duties and taxes on petroleum products shall be payable only upon lifting of the petroleum products produced from the imported crude oil, subject to rules and regulations that may be prescribed by the Bureau of Customs and the Bureau of Internal Revenue, to ensure that crude oil shall not be lifted from the refinery without payment of appropriate duties and taxes.

Provided, further that, in case of withdrawal of the petroleum products produced from the imported crude oil, for introduction into the customs territory, all applicable duties, taxes and other charges shall be paid to the Bureau before release from custody subject to the prior requirement of authority to release imported goods (ATRIG).

Provided finally that, in case of sale of the petroleum products produced from the imported crude oil, vat on importation and vat on the actual sale less input vat, shall be payable to the BOC.

Registered business enterprises, whose performance commitments include job generation, shall maintain their employment levels to the extent practicable, and in the case of reduced employment or when the performance commitment for job generation is not met, the registered business enterprises must submit to their respective Investment Promotion Agencies and the Fiscal Incentives Review Board their justification for the same.

The Secretary of Finance shall issue the necessary guidelines for the effective implementation of the duty and tax exemptions provided under the Act and these Rules.

SECTION 8. *Taxation after the expiration of the period of availment of incentives.* – All registered business enterprises shall pay all applicable taxes at the regular rates under this Code and other laws after the expiration of the period of incentives of their registered project or activity.

RULE 3. Period of Availment of Incentives

SECTION 1. *Period of availment for export enterprises.* – Export enterprises may be granted an ITH of four (4) to seven (7) years, depending on location and industry priorities, and followed by special corporate income tax rate or enhanced deductions for ten (10) years.

The option to avail of either SCIT or enhanced deductions after the ITH period shall be exercised by the registered business enterprise at the time of application for registration of the project with the concerned IPA. Such option (SCIT or ED) shall be irrevocable for the entire duration of

entitlement to such incentives. For qualified expansion or new activities, the export enterprise has the option to avail of new mix of incentives.

SECTION 2. *Period of availment for domestic market enterprise.* – Domestic market enterprises may be granted an ITH for four (4) to seven (7) years followed by enhanced deductions for five (5) years.

SECTION 3. *Qualified expansion, entirely new project, or existing registered projects or activities.* – A qualified expansion, entirely new project, or existing registered projects or activities prior to the effectivity of this Act, may register and avail of the incentives granted under the Act for the prescribed period, subject to the criteria and conditions set forth in the SIPP in effect at the time of application, and performance review by the FIRB: *Provided, That* after the expiration of the transitory period under Section 311(C) of the Code, export enterprises registered prior to the effectivity of this Act shall have the option to reapply and avail of the incentives granted under the Act for the same period provided under Section 1 of this Rule.

For this purpose, RBEs who avail of the transitory provision and incentives under this Act on reapplication will not be eligible to apply for new incentives under the Act for their existing activities unless there is qualified expansion, entirely new project or additional investments.

Qualified expansion projects or activities defined under Section 2, Rule 1, may be granted an ITH for three (3) years, *Provided, that* the application for tax incentives for a qualified expansion project or activity shall be approved by the concerned IPA or FIRB, as the case may be, based on the amount of investment capital of the expansion project or activity.

SECTION 4. *Start of period of availment.* – The period of availment of the foregoing income tax-based incentives shall commence from the actual start of commercial operations with the RBE availing of the tax incentives within three (3) years from the date of registration, unless otherwise provided in the Strategic Investment Priority Plan and its corresponding guidelines.

SECTION 5. *Prioritization and tiering.* – The determination of the category shall be based on both location and industry of the registered project or activity, and other relevant factors as may be defined in the SIPP.

The location of the registered project or activity shall be prioritized according to the level of development as follows: (1) National Capital Region (NCR); (2) metropolitan areas or areas contiguous and adjacent to the NCR; and (3) all other areas. The Metropolitan areas shall be determined by the NEDA.

The industry of the registered project or activity shall be prioritized according to the national industrial strategy specified in the SIPP. The SIPP shall define the coverage of the tiers and provide the conditions for qualifying the activities.

SECTION 6. *Period of availment of incentives based on location and industry priorities.* –

(A) ***For exporters' activities:***

Location/Industry Tiers	Tier I	Tier II	Tier III
National Capital Region	4 ITH + 10 ED/SCIT	5 ITH + 10 ED/SCIT	6 ITH + 10 ED/SCIT
Metropolitan areas or areas contiguous and	5 ITH + 10 ED/SCIT	6 ITH + 10 ED/SCIT	7 ITH + 10 ED/SCIT

adjacent to National Capital Region			
All other areas	6 ITH + 10 ED/SCIT	7 ITH + 10 ED/SCIT	7 ITH + 10 ED/SCIT

(B) For domestic market activities:

Location/Industry Tiers	Tier I	Tier II	Tier III
National Capital Region	4 ITH + 5 ED	5 ITH + 5 ED	6 ITH + 5 ED
Metropolitan areas or areas contiguous and adjacent to National Capital Region	5 ITH + 5 ED	6 ITH + 5 ED	7 ITH + 5 ED
All other areas	6 ITH + 5 ED	7 ITH + 5 ED	7 ITH + 5 ED

SECTION 7. Projects or activities located in areas recovering from armed conflict or a major disaster. – In addition to the incentives provided in the preceding Section, projects or activities of registered business enterprises located in areas recovering from armed conflict or a major disaster shall be entitled to two (2) additional years of ITH, subject to the following:

- a. Declaration of the President or his/her authorized representatives of the existence of an armed conflict or a major disaster, including pandemic, epidemic, super typhoon, or other analogous circumstances; or
- b. The issuance of a presidential directive for the implementation of recovery programs of the affected area or areas.

SECTION 8. Projects or activities relocating from the National Capital Region. – A project or activity registered prior to the effectivity of the Act or registered under this Act that will completely relocate from NCR during the period of their incentives, shall be entitled to three (3) additional years of ITH to commence at the completion of the relocation of operations:

- (A) For an existing project or activity registered under this Act, the additional three (3) years of ITH shall commence after the expiration of the period of incentives granted under the Certificate of Registration issued to the RBE.
- (B) For an existing project or activity under the transition period under this Act, the additional three (3) years of ITH shall commence after the expiration of the transition period provided under this Act;

The concerned IPA shall issue a CETI to the concerned RBE as proof of its entitlement to the additional three (3) years of ITH.

Complete relocation shall mean the total physical relocation of the facilities outside of NCR, including the transfer of the full operations of the registered project or activity to the new area of operation.

SECTION 9. Review and revision. - The industry and locational prioritization specified herein shall be subject to review and revision every three (3) years in accordance with the SIPP, or in

exceptional circumstances, to attract substantial investment to respond to a situation or crisis or to target specific industries during a national emergency, state of calamity, public health emergency, or other crisis of analogous circumstances.

RULE 4. Strategic Investment Priority Plan

SECTION 1. *General Principles.* – The Strategic Investment Priority Plan (SIPP) shall provide for the types of fiscal and non-fiscal support needed to:

- a. create high-skilled jobs to grow a local pool of enterprises, particularly micro, small and medium enterprises (MSMEs), that can supply to domestic and global value chains;
- b. increase the sophistication of products and services that are produced and/or sourced domestically;
- c. expand domestic supply and reduce dependence on imports;
- d. attract significant foreign capital or investment; and
- e. Promote export diversification and accelerate countryside development (as these are consistent with the tier and locational criteria of the SIPP).

SECTION 2. *Formulation.* – The Board of Investment (BOI), in coordination with the Fiscal Incentives Review Board (FIRB), investment promotion agencies (IPAs) and other government agencies administering tax incentives, shall formulate and recommend the SIPP for the approval of the President.

For this purpose, the BOI shall undertake consultation with the above-named agencies, and all other relevant agencies on the proposed SIPP. Thereafter, it shall submit a report to the Steering Committee referred to in Section 7 of this Rule.

SECTION 3. *Contents.* - The SIPP shall contain the following:

- a. Priority projects or activities that are eligible or qualified to be granted incentives under the Act;
- b. Scope and coverage of location and industry tiers;
- c. Terms and conditions on the grant of enhanced deductions;
- d. Qualifications for expansion, or entirely new projects or activities, to avail of incentives;
- e. Criteria and conditions for existing registered projects or activities prior to the effectivity of the Act to register and avail of the incentives under the Act;
- f. Conditions and qualifications for export enterprises registered prior to the effectivity of the Act to reapply and avail of SCIT after the expiration of the transitory period under Section 311(C) of the Act;
- g. Specific qualification requirements or conditions for a particular sector or industry and other limitations as set and determined by the BOI and in coordination with the Fiscal Incentives Review Board; and
- h. Export of at least seventy percent (70%) of products and services.

SECTION 4. *Criteria for Investment Priority Determination.* - All sectors, industries, projects or activities that may be included in the SIPP shall undergo an evaluation process to determine the suitability and potential of the industry or the sector in promoting long-term growth and sustainable development, and the national interest. In no case shall a sector, industry, project or activity be included in the SIPP unless it is supported by a formal evaluation process or report. Any of the following shall be considered in the evaluation:

- a. Whether the project or activity is covered by the Philippine Development Plan or its equivalent, as published by the National Economic and Development Authority, and other

priority government programs;

- b. Whether the project or activity meets any of the following:
 - i. substantial amount of investments;
 - ii. considerable generation of employment, especially towards less developed areas;
 - iii. considerable amount of net exports;
 - iv. use of modern, advance, or new technology or existing technology but not yet applied in the Philippines;
 - v. processes and innovations, including urban planning and development methods, that will lead towards the attainment of the sustainable development goals, shall include, but not be limited to, adoption of adequate environmental protection systems and sustainability strategies;
 - vi. address missing links and other gaps in the supply or value chain or otherwise moving up the value chain or product ladder;
 - vii. promote market competitiveness or enhances the country's competitiveness as an investment destination;
 - viii. enhance the capabilities of Filipino enterprises and professionals to produce and offer increasingly sophisticated products and services;
 - ix. contribute to Philippine food security and increased incomes in the agriculture and fisheries sector; or
 - x. promote regional and global operations in the country.
- c. Industry tiers:
 - i. Tier I shall include activities that (i) have high potential for job creation; (ii) take place in sectors with market failures resulting in under-provision of basic goods and services; (iii) generate value creation through innovation, upgrading or moving up the value chain; (iv) provide essential support for sectors that are critical to industrial development; or (v) are emerging owing to potential comparative advantage;
 - ii. Tier II shall include activities that produce supplies, parts and components, and intermediate services that are not locally produced but are critical to industrial development and import-substituting activities, including crude oil refining; and
 - iii. Tier III activities shall include (i) research and development resulting in demonstrably significant value-added, higher productivity, improved efficiency, breakthroughs in science and health, and high-paying jobs; (ii) generation of new knowledge and intellectual property registered and/or licensed in the Philippines; (iii) commercialization of patents, industrial designs, copyrights and utility models owned or co-owned by a registered business enterprise; (iv) highly technical manufacturing; or (v) are critical to the structural transformation of the economy and require substantial catch-up efforts.
- d. Constraints preventing RBEs from entering or upgrading the specified project or activity;
or
- e. Areas necessary for countrywide development or found to be deficient in infrastructure, public utilities, and other facilities, such as irrigation, drainage, or other similar infrastructure.

In no case shall the IPAs accept applications unless the project or activity is listed in the SIPP. Projects or activities not listed in the SIPP shall be automatically disapproved.

SECTION 5. *Validity.* – The SIPP shall be submitted to the President for the approval and shall be valid for three (3) years from its issuance; Provided, that the BOI shall formulate and submit a new SIPP to the President not later than October 1 of the third year of its effectivity; Provided further, that all such areas under Memorandum Order No. 50, Approving the 2020 Investment Priorities Plan, signed by the President on 18 November 2020, which took effect on 6 December 2020, and its General Policies and Specific Guidelines to Implement the 2020 Investment Priorities Plan shall be open for application until the publication of the SIPP under the Act.

SECTION 6. *Mandatory Laws.* – The SIPP shall include sectors or industries that are mandated by special laws to be listed in the Investment Priority Plan and/or granted incentives.

SECTION 7. *Steering Committee.* - The Steering Committee shall be composed of the BOI Managing Head, as the Chairperson, the authorized representatives of the Office of the President and the IPAs, and the Chairperson of the Technical Committee of the FIRB.

The Steering Committee shall review the report referred to in the 2nd paragraph of Section 2 of this Rule and submit its recommendations to the BOI. After receipt of the recommendations of the Steering Committee, the BOI shall, upon review, recommend the SIPP to the President for approval.

SECTION 8. *Amendments to the SIPP.* - Subject to publication requirements and the criteria for investment priority determination, the BOI may, at any time, include additional areas in the SIPP, alter any of the terms of the declaration of an investment area, and temporarily suspend projects or activities therein if it considers that such project or activity is no longer a priority within the effectivity of the SIPP; Provided, that, any amendment or suspension of the SIPP shall not prejudice the availment of fiscal incentives already granted to RBEs.

The BOI shall review the current SIPP and shall consider recent developments in the industry using the criteria for investment priority determination and adopt reasonable and justifiable positions of the private sector and other related government agencies.

SECTION 9. *Publication.* – Upon approval of the plan, in whole or in part, or upon approval of an amendment thereof, the plan or the amendment, specifying and declaring the preferred areas of investments shall be published in at least one (1) newspaper of general circulation or the *Official Gazette*: *Provided*, that all such areas in the existing SIPP shall be open for application until publication of an amendment or deletion thereof.

PART III REGISTRATION AND AVAILMENT OF INCENTIVES

RULE 5. Scope

SECTION 1. *Authority of the FIRB to Grant Tax Incentives.* – The power to grant tax incentives is a function of the FIRB. Where the investment capital is equal to one billion pesos (₱1,000,000,000.00) or below, the FIRB shall delegate the power to grant tax incentives to the concerned IPA.

The FIRB, upon the recommendation of the concerned IPA, shall approve or disapprove the grant of tax incentives to registered projects or activities with investment capital of more than one billion pesos (₱1,000,000,000.00).

Splitting of the total amount of investment capital by breaking up the projects or activities into smaller projects or activities, for the purpose of evading or circumventing the jurisdiction of the

FIRB to approve, shall not be allowed. A finding that splitting of investment capital occurred authorizes the FIRB to treat the separate application as a single project or activity.

Splitting of investment capital presupposes singularity of a project or activity but which, by an act of the business entity, was divided or broken into several smaller investment capital amounts, or was divided into artificial phases or stages having smaller investment capital amounts. The following may be considered in determining whether splitting occurred:

1. The nature of the activity or project;
2. The similarities of the projects' products or services;
3. The expected customers or clients;
4. The time interval between applications;
5. The proposed start of commercial operation of the projects; or
6. Other analogous circumstances.

The exercise of FIRB's policy making powers shall be guided by the following standards:

- a. Develop a more responsive and globally-competitive tax incentives regime that is performance-based, targeted, time-bound, and transparent;
- b. Provide assistance to attract preferred investments, sustain economic growth, and competitiveness;
- c. Create more jobs, transfer technology, develop skills for the local labor force;
- d. Promote fiscal responsibility in the administration of tax incentives;
- e. Provide assistance to promote exports of products and services;
- f. Promote the use of domestic inputs, and development of rural areas; and
- g. Enable parallel development for rural areas and areas recovering from armed conflict and calamities.

SECTION 2. Authority of the IPAs. – The concerned IPA shall have the exclusive jurisdiction to register all projects or activities, regardless of the amount of investment capital, subject to compliance with the minimum standards under Part III, Rule 6, Section 2 (Qualifications for Registration).

Under a delegated authority, the concerned IPA has the authority to approve or disapprove the grant of tax incentives to registered projects or activities with investment capital of one billion pesos (₱1,000,000,000.00) and below, subject to compliance with this Act and the minimum standards prescribed by these Rules.

The registration of projects and grant of incentives covered by special laws not repealed by CREATE Act shall continue to be administered by the IPA vested with such authority: *Provided*, That those laws with specific incentives provisions thereto shall continue to be granted with the incentives therein; *Provided further*, That where such law grants entitlement of incentives under *Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987*, as amended, the incentives regime and the conditions for the grant under the Code shall apply.

RULE 6. Registration of Business Enterprise

SECTION 1. *Qualified Business Enterprise.* – Subject to the qualifications under the SIPP, every project or activity of the following may qualify for registration under the Act:

- a. Export enterprises; and
- b. Domestic market enterprises.

SECTION 2. *Qualifications for Registration.* – Every applicant, as far as applicable, must comply with the following:

- a. Every project or activity in which it is engaged or proposes to engage in is included in the SIPP and must satisfy the qualifications set forth therein;
- b. If the project or activity in which it is engaged or proposes to engage in is nationalized by the Constitution or by law, the ownership requirement of the Constitution and/or such law has been complied with;
- c. If there is a law requiring a minimum percentage of its directors to be Philippine citizens, the same has been complied with. To determine compliance with the citizenship requirement for members of the Board of Directors, the basis shall be the positions actually filled, exclusive of vacancies, unless there is a specific rule to the contrary; and
- d. That the project or activity in which the applicant is engaged in is within its corporate powers and is not otherwise prohibited by law.

SECTION 3. *Method of filing; Fees.* – Application for registration shall be filed electronically through a system prescribed by the FIRB, or through the system of an IPA: *Provided, That* the IPA system is interoperable with and can be linked to the FIRB system: *Provided, further, That* in the event that the FIRB or IPA system is unavailable, such application may be filed manually, accomplished in two (2) copies and sworn to before a notary public, or in any manner prescribed by the concerned IPA. The applicable fees shall be determined by the IPA concerned.

SECTION 4. *Basic Documentary Requirements.* – The application shall be supported by the following requirements:

- a. Enterprise-level information
 - (1) Department of Trade and Industry (DTI) or Securities and Exchange Commission (SEC) registration, whichever is applicable
 - (2) BIR Certificate of Registration
 - (3) Tax Identification Number (TIN)
 - (4) General company information
 - (5) Business capitalization and ownership structure
 - (6) Authorized business representative details
 - (7) Latest Audited Financial Statements (AFS), if applicable
- b. Project or activity-level information
 - (1) Locational address, contacts, activity representative details
 - (2) Description, classification, and type of activity
 - (3) Project or activity set-up timetable
 - (4) Committed investment capital and other related details
 - (5) Facility or utility requirements
 - (6) Projected financial performance
 - (7) Projected sales, raw materials, and production
 - (8) Projected employment, by type

c. Such other documents or information as may be required under the SIPP, the IPA, or by the FIRB.

SECTION 5. *Incomplete Application.* — The concerned IPA shall notify the applicant of all pertinent requirements not complied within three (3) working days from receipt of such application. Upon completion of the deficiencies, the application shall be officially accepted immediately and the corresponding notice shall be issued to the applicant. The application shall be considered withdrawn upon failure to submit complete documents or information within seven (7) working days from receipt of the notification without prejudice to reapplication.

SECTION 6. *IPA Evaluation Process.* – The evaluation procedure shall be as follows:

- a. The concerned IPA shall conduct a pre-evaluation on the applicant’s eligibility for incentives and completeness of documents.
- b. The concerned IPA shall conduct an initial impact evaluation to determine *ex ante* impact of tax incentives to the investment project or activity applied for. The Cost to Government represented by the amount of incentives that the RBE will enjoy will be compared to the Benefits to Government which will be represented by the taxes, duties and fees to be paid for by the RBE to Government (national and local). The period of comparison shall cover the entire period of incentives entitlement. A preliminary negative fiscal cost-benefit ratio shall not, by itself, disqualify the applicant for registration.

The benefits to Government shall be complemented with other non-fiscal benefits to be derived by the Government from the project, e.g., multiplier effects, linkages, social, technological and environmental contributions.

The impact evaluation will determine, among others, the project’s (i) foreseen contribution to the relevant national development plans and international development goals, as well as in the attainment of industry development objectives; (ii) financial viability and sustainability of the project; and (iii) economy wide impact and spillover effects using economic, social, and environmental analysis, and innovation impact, and other similar methods.

- c. The concerned IPA shall issue the Order of Payment for the filing fee and stamp the Date of Official Filing and the Application Number on the application.
- d. The concerned IPA shall notify the applicant of any issues encountered during the evaluation process. The applicant shall be given a reasonable period of time to address the issue encountered or comply with the additional requirements, if any.
- e. In all cases, the FIRB shall decide on the recommended tax incentives by the concerned IPA for projects or activities with investment capital of more than one billion pesos (>P1,000,000,000).

SECTION 7. *FIRB Evaluation Process.* – Unless otherwise modified by the FIRB Board, the FIRB shall evaluate the IPA recommendation for tax incentives for projects or activities referred to in Section 1, Rule 5 (Authority of the FIRB to Grant Tax Incentives), following these procedural steps:

- a. Upon completion of all documentary requirements, the Secretariat shall review the evaluation and recommendations of the IPAs and prepare an evaluation report which

shall be submitted to the Technical Committee. Otherwise, the Secretariat shall return the application to the IPA concerned.

- b. The Technical Committee may adopt or reject the Secretariat's evaluation, and shall submit its recommendations to the Board.
- c. The Board shall have the exclusive authority to decide on all applications for tax incentives. The Board may adopt, revise, or reverse the recommendations of the Technical Committee, through a Board resolution issued for each application and signed by at least a majority of the members of the Board.
- d. The FIRB Secretariat shall provide the concerned IPA with a copy of the Board resolution on the approved tax incentives to be provided in the terms and conditions for registration of the RBE.

RULE 7. Action on the Registration

SECTION 1. IPA Action; Notice to Applicant. – The concerned IPA shall decide on the application of the concerned RBE upon evaluation of complete documentary requirements and other requirements prescribed in Part III of these Rules. The IPA shall notify the business enterprise of the decision on the application. In the event of denial of the application, the IPA shall issue a Notice of Denial to the business enterprise that clearly and distinctly states the facts, law, or rule on which the denial is based without prejudice to reapplication provided that the grounds for the denial are addressed.

SECTION 2. Certificate of Registration. – The Certificate of Registration (COR) shall be issued by the concerned IPA. The COR shall state, among others:

- a. Name and business address of the RBE;
- b. Tax Identification Number of the RBE;
- c. Unique control number;
- d. Registered project or activity;
- e. Tax incentives entitlement under agreed terms and conditions; and
- f. Period of entitlement to tax incentives

SECTION 3. Conditions Precedent for Issuance of Certificate. – Before the issuance of the Certificate of Registration, the following requirements shall be submitted and complied with:

- a. Payment of registration fee;
- b. Letter, or if a corporation, resolution of the applicant's board of directors formally accepting the proposed terms and conditions of registration;
- c. Sworn statement authorized by the board of directors/partners or by the individual adopting or affirming all representations and commitments made by the applicant to the concerned IPA, and stating that with the exception of those which the concerned IPA has

been duly advised in writing, all information and data heretofore submitted by it to are still correct; and

- d. All pre-registration requirements, if any, imposed by the concerned IPA.

Section 4. Issuance of Certificate. — Upon fulfillment of the foregoing conditions precedent, the Certificate of Registration shall be issued and will entitle the business enterprise to the tax incentives granted by the FIRB or the concerned IPA subject to the terms and conditions imposed therein.

RULE 8. Application for Tax Incentives

SECTION 1. Filing of Application. — All applications for tax incentives shall be filed with the concerned IPA.

SECTION 2. Form. — All applications shall be filed on a per project basis and made upon the prescribed forms under these Rules; Provided, that simplified forms shall be prescribed for Micro and Small Enterprises.

SECTION 3. Application for Certificate of Entitlement to Tax Incentives (CETI). — Prior to the filing of ITR, the RBE shall apply for a CETI which shall be filed electronically, together with the documentary requirements under this Rule, through a system prescribed by the FIRB, or through the system of an IPA: Provided, That the IPA system is interoperable with and can be linked to the FIRB system.-Provided, further, That in the event that the FIRB or IPA system is unavailable, such application may be filed manually, accomplished in two (2) copies and sworn to before a notary public or in any manner prescribed by the concerned IPA. The applicable fees shall be determined by the IPA concerned.

SECTION 4. Issuance of CETI. — Upon verification of the compliance with the terms and conditions of its registration and payment of corresponding fee by the RBE, the CETI shall be issued by the concerned IPA, in a prescribed-form, upon application by the RBE which shall be attached to the ITR filed with the BIR. The CETI of projects or activities with investment capital of more than one billion pesos (>P1,000,000,000) shall be issued by the concerned IPA upon approval of the FIRB. The CETI shall state, among others:

- a. Name and business address of the RBE;
- b. Tax Identification Number of the RBE;
- c. Unique control number;
- d. Registered project or activity;
- e. Name of IPA having jurisdiction over the registered enterprise; and
- f. Types and approved amounts of tax incentives for the taxable year, as applicable.

The issuance of the CETI shall be without prejudice to the RBE's full compliance with its terms and conditions prior to tax incentives availment for a particular taxable year.

SECTION 5. FIRB Evaluation Process. — Unless otherwise modified by the FIRB Board, the FIRB shall evaluate applications for CETI for projects or activities referred to in Section 1, Rule 5 (Authority of the FIRB to Grant Tax Incentives), following these procedural steps:

- a. Upon completion of all documentary requirements, the Secretariat shall review the evaluation and recommendations of the IPAs and prepare an evaluation report which shall be submitted to the Technical Committee. Otherwise, the Secretariat shall return the application to the IPA concerned.

- b. The Technical Committee may adopt or reject the Secretariat's evaluation, and shall submit its recommendations to the Board.
- c. The Board shall have the exclusive authority to decide on all applications for tax incentives. The Board may adopt, revise, or reverse the recommendations of the Technical Committee, through a Board resolution issued for each application and signed by at least a majority of the members of the Board.
- d. The FIRB Secretariat shall provide the concerned IPA with a copy of the Board resolution on the application for tax incentives of the RBE.

SECTION 6. *Validation of tax incentives claimed.* – After the filing of the ITR together with the CETI with the BIR, RBEs availing of tax incentives shall submit the following document with the concerned IPA or FIRB, as applicable:

- a. Certificate of Registration issued by the concerned IPA;
- b. Secretary's Certificate stating the authorized signatory of the application for ITH incentive;
- c. ITR with the complete sources of income broken down per activity or project, if applicable;
- d. Audited Financial Statements supported by the following schedules:
 - (1) Audited Segregated Income Statement of registered and non-registered activity certified by external auditor.
 - (2) In case of multi-registered activities, Audited Segregated Income Statement for each of the registered activity.
 - (3) Breakdown of Miscellaneous/Other/Various Income, if different in amount per ITR.
- e. Details of scrap sales, if any;
- f. Duly accomplished CBA Data form;
- g. Summary of sales, in volume and value, made during the taxable year. Export sales should include values in US dollars and in Pesos and the exchange rates used;
- h. List of Stockholders;
- i. Statement of Management Responsibility;
- j. SSS Certificate of Good Standing (if required);
- k. Compliance with other conditions for entitlement to income tax based incentives under general/specific terms and conditions of registration;
- l. For less than a year availment, in addition to requirements (a) to (g):
 - (1) Audited Segregated Income Statement segregating period still entitled to income tax based incentives from period no longer entitled to income tax based incentives; and

- (2) Certified true copies of Quarterly Corporate Income Tax Returns for the Period Covered by income tax based incentives.
- m. For first time availors, in addition to requirements (a) to (k):
 - (1) Certificate of Registration with BIR; and
 - (2) Sworn Statement as to the actual start of commercial operation of a registered project or activity to be signed by the President or Owner.

SECTION 7. IPA Evaluation Process. – The evaluation procedure for tax incentive claimed by a RBE shall be as follows:

- a. The concerned IPA shall conduct an evaluation of the RBEs entitlement to tax incentives
- b. The concerned IPA shall verify the RBE’s compliance with the performance metrics under the terms and conditions of its registration.
- c. The concerned IPA shall notify the applicant of any issues encountered during the evaluation process. The applicant shall be given a reasonable period of time to address the issue encountered or comply with the additional requirements, if any.

SECTION 8. Conditions for the Grant of Tax Incentives. – The grant of tax incentives shall adhere to the following:

- a. The availment of incentives shall be subject to the requirements and conditions set forth in the SIPP and performance review by the FIRB or concerned IPA;
- b. Compliance with the target performance metrics specified under the terms and conditions of the registration of a registered project or activity: Provided, That when any of the agreed performance commitments are not met, justification shall be submitted to the concerned IPA or the FIRB. The enjoyment of tax incentives may be canceled, suspended, or withdrawn upon due notice;
- c. Compliance with the e-receipting and e-sales requirement in accordance with Sections 237 and 237(a) of the Code. *Provided that*, this condition is contingent upon the capacity of the BIR’s e-receipt system;
- d. Installation of an adequate accounting system that shall identify the investments, revenues, costs, and profits or losses of each registered project or activity undertaken by the enterprise separately from the aggregate investments, revenues, costs, and profits or losses of the whole enterprise; or establish a separate corporation for each registered project or activity if the IPA should so require; and
- e. Submission of annual reports of beneficial ownership of the organization and related parties.

SECTION 9. Finality of Decision on Application for Tax Incentives. – The decision of the FIRB or concerned IPA, as the case may be, on the application for tax incentives of the RBE shall be final and immediately executory.

SECTION 10. Endorsement to the BIR. – The action on the application for incentives shall be endorsed to the Assessment Service of the BIR National Office by the concerned IPA or FIRB, as the case may be.

SECTION 11. Burden of Proof. – In every case, the applicant shall have the burden of proving that every project or activity is qualified for the tax incentives applied for.

Rule 9: Customs Duty Exemption on Importation of Capital Equipment, Raw Materials, Spare Parts and Accessories

SECTION 1. Certificate of Authority to Import (CAI)/Admission Entry. – The Certificate of Authority to Import (CAI) or Admission Entry shall be issued by the concerned IPA in a prescribed form.

SECTION 2. Application for CAI/Admission Entry. - The application for CAI or Admission Entry shall be filed electronically through a system prescribed by the FIRB, or through the system of an IPA: *Provided, That* the IPA system is interoperable with and can be linked to the FIRB system. *Provided, further, That* in the event that the FIRB or IPA system is unavailable, such application may be filed manually, accomplished in two (2) copies and sworn to before a notary public or in any manner prescribed by the concerned IPA. The applicable fees shall be determined by the IPA concerned.

The action of the concerned IPA, whether it be approval or disapproval, shall be communicated in writing to the applicant. If issued, a copy of the CAI shall be sent to the BOC.

SECTION 3. Validity of CAI/Admission Entry. – The CAI or Admission Entry is non-transferable and shall be valid for a period of one (1) year from the date of the issuance, unless invalidated or revoked under these Rules.

In the event that the CAI remained unutilized during its validity period, the applicant shall surrender the Certificate to the concerned IPA within fifteen (15) days from its expiration.

SECTION 4. Performance Bond. – The posting of performance bond from the Government Service Insurance System (GSIS), equivalent to the duties waived on the imported capital equipment, raw materials, spare parts or accessories, shall be a pre-condition to the zero percent (0%) duty importation by RBEs. In lieu of the bond, the concerned IPA may require a guarantee from the principal stockholder(s) or other form of guarantee to ensure performance. In the event of violation of its terms and conditions for importation, the principal stockholder(s) shall be solidarily liable with the RBE.

The concerned IPA may lift the performance bond posted in the following cases:

- a. for domestic enterprises, upon installation and utilization of the imported capital equipment for the registered activity; and
- b. for export enterprises, after a period of one (1) year of exportation; *Provided, however,* that the concerned IPA may waive the performance bond posted on the imported capital equipment, spare parts and accessories for RBEs with good track record.

SECTION 5. Monitoring of the Imported Capital Equipment, Spare Parts and Accessories. –

- a. Every 5th day of the month, the RBE shall submit to the concerned IPA or FIRB, as the case may be, a list of tax and duty-free importations that have been released from

customs' custody together with copies of the goods declarations, which is also known as Single Administrative Document (SAD), information on the installation date and pertinent document of the previous month for monitoring purposes.

- b. The tax and duty-free importations shall, at any reasonable time, be subjected to inspection by the concerned IPA or FIRB, as the case may be, to verify whether it has actually been installed and is being used by the qualified RBE in its registered activity.

RULE 10. Power of the President to Grant Incentives

SECTION 1. *Power of the President to Grant Incentives.* – Notwithstanding the provisions of Sections 295 and 296 of the Act, the President may, in the interest of national economic development and upon the recommendation of the FIRB, modify the mix, period, or manner of availment of tax incentives, or craft the appropriate financial support package for a highly desirable project or a specific industrial activity based on defined development strategies for creating high-value jobs, building new industries to diversify economic activities, and attracting significant foreign and domestic capital or investment, and the fiscal requirements of the activity or project, subject to maximum incentive levels recommended by the FIRB.

Financial support includes utilization of government resources such as land use, water appropriation, power provision, and budgetary support under the annual general appropriations act.

SECTION 2. *Limitations to the Period of Incentives Availment.* – The total period of incentive availment that may be granted by the President shall not exceed forty (40) years. The grant of ITH shall not exceed eight (8) years. For the remaining incentive period, a SCIT rate of five percent (5%) may be granted.

SECTION 3. *Conditions for the grant.* - The FIRB shall determine whether the benefits that the government may derive from such investment are clear and convincing and far outweigh the cost of incentives that will be granted in determining whether a project or activity is highly desirable.

The exercise by the President of his powers under this section shall be based on a positive recommendation from the FIRB upon its determination that the following conditions are satisfied:

- (1) the project has a comprehensive sustainable development plan with clear inclusive business approaches, and high level of sophistication and innovation; and
- (2) minimum investment capital of Fifty Billion Pesos (P50,000,000,000) or its equivalent in United States dollars, or a minimum direct local employment generation of at least ten thousand (10,000) within three (3) years from the issuance of the certificate of registration.

SECTION 4. *Periodic review of thresholds.* - The threshold shall be subject to a periodic review by the FIRB every three (3) years, taking into consideration international standards or other economic indicators.

SECTION 5. *Cancellation of incentives.* - If the project fails to substantially meet the projected impact on the economy and agreed performance targets, the FIRB shall recommend to the President the cancellation of the tax incentive or financial support package or the modified period

or manner of availment of incentives, after due hearing and an adequate opportunity to substantially comply with the agreed performance targets and outputs.

SECTION 6. Suspension of the power of the President to grant incentives. - This power of the President, in as far as it commands additional public sector expenditures in support of investors, is suspended during fiscal years when, an unmanageable fiscal deficit is declared by the President on the advice of the Development Budget Coordination Committee (DBCC) with a consequence that even core budgetary obligations, such as, but not limited to, mandatory revenue allotments for LGUs and budget for the NEDA's core public investments program, cannot be fully financed.

**PART IV
TAX INCENTIVES MANAGEMENT AND TRANSPARENCY**

RULE 11. Filing and submission of the Annual Tax Incentives Report

SECTION 1. Filing of Tax Returns and Payment of Tax Liabilities. – All RBEs and OREs whether taxable or exempt, are required to file their tax returns and pay their tax liabilities, on or before the deadline as provided under the National Internal Revenue Code of 1997, as amended, using the electronic system for filing and payment of taxes with the BIR. *Provided, That,* for purposes of complying with their tax obligations, registered entities which do not have access to the electronic facilities shall file with their respective revenue district offices.

The IPAs and OGAs administering tax incentives, shall consider only electronically filed returns for purposes of availing income-based tax incentives, except when the electronic services of the BIR is unavailable, as evidenced by written advice issued by the BIR. In such cases, the RBEs and OREs shall file and/or pay the taxes due on or before the statutory deadline manually. In which case, the BIR duly stamped tax returns shall be accepted by the IPAs and the OGAs.

SECTION 2. Submission of the ATIR and ABR. – All RBEs and OREs availing of tax incentives shall, within thirty (30) calendar days from the statutory deadline for filing of tax returns and payment of taxes, submit to their respective IPAs or OGAs administering tax incentives the following:

- (1) Complete ATIR of their income-based tax incentives, VAT exemptions and zero-rating, customs duty exemptions, deductions, credits or exclusions from the income tax base, and exemptions from local taxes; and
- (2) Complete annual benefits report which shall include data such as, but not limited to, the approved and actual amount of investments, approved and actual employment level and job creation including information on quality of jobs and hiring of foreign and local workers, approved and actual exports and imports, domestic purchases, profits and dividend payout, all taxes paid, withheld and foregone.

A copy of the report shall be simultaneously submitted to the FIRB in electronic form.

SECTION 3. Contents of the ATIR and ABR. – The ATIR and ABR shall contain an entity and project or activity level tax expenditure and benefits data for a given year. The report shall be in a matrix format as presented in “Annex A” for ITH and other income tax-based incentives format, “Annex B” for VAT, excise, and duty exemptions format, “Annex C” for enhanced deductions format, and “Annex D” for additional RBE general information format for the benefits data. The report shall also contain but not limited to the following data:

- (A) Cost data:
 - (1) Income-based tax incentives;

- (2) VAT exemption;
- (3) Value of VAT zero-rated;
- (4) Customs duty exemptions;
- (5) Itemized deductions;
- (6) Depreciation allowance of the assets acquired for the entity's production of goods and services (qualified capital expenditure);
- (7) Domestic input expense;
- (8) Power expense;
- (9) Reinvestment allowance for manufacturing industry;
- (10) Enhanced NOLCO;
- (11) Credits or exclusions from the income tax base;
- (12) Exemptions from local taxes;
- (13) Approved and actual amount of investments;
- (14) Net sales;
- (15) Cost of sales;
- (16) Gross income;
- (17) Volume and value of imports on capital goods;
- (18) Volume and value of imports on goods other than capital goods;
- (19) Description of importation;
- (20) Amount of tax and duty waived on importations;
- (21) Value of sales to domestic market; and
- (22) Duty and tax payment on local sales.

(B) Benefits data:

- (1) Total number of Filipino employees;
- (2) Total direct employment for the year (as of year-end);
- (3) Direct employees hired for the year;
- (4) Total indirect employment for the year (as of year-end);
- (5) Indirect employees hired for the year
- (6) Compensation and benefits;
- (7) Services rendered by non-residents;
- (8) Training expenses;
- (9) Research and development expenses;
- (10) Export sales;
- (11) Domestic sales;
- (12) Taxes paid per type of tax; Local business taxes and fees;
- (13) Domestic purchases of raw materials;
- (14) Total domestic purchases on capital goods;
- (15) Total domestic purchases on goods other than capital goods;
- (16) Total domestic purchases on service;
- (17) Domestic capital input;
- (18) Imported raw materials;
- (19) Imported capital input;
- (20) Other domestic inputs;
- (21) Infrastructure spending;
- (22) Retained earnings;
- (23) Revenues or sales;
- (24) Income before and after tax;
- (25) Dividends declared (cash dividends);
- (26) Royalties, management fees, and payments for technical know-how, cost-recharges, and headquarter costs;
- (27) Total approved investment; and
- (28) Total actual investment.

SECTION 4. Role of the IPAs and OGAs administering tax incentives. – The heads of the IPAs and OGAs shall:

- a. Submit to the FIRB per firm- and per registered project- or activity-level in a machine-readable format: (i) data on tax incentives based on the submissions of registered business enterprises and other registered enterprises as presented in “Annex E ” for ITH and other income tax-based incentives, “Annex F for VAT, excise tax and duty exemptions, and “Annex G ” for enhanced deductions; and (ii) ANNEX H for other investment- and non-investment-related data, for purposes of conducting an impact evaluation method. *Provided, that* the FIRB shall generate the aforementioned reports upon the establishment of the reporting system in the FIRB Incentives Registration and Monitoring System (FIRMS).
- b. Submit to the FIRB a master list format (“Annex I”) of all RBEs and OREs availing tax incentives, within thirty (30) days after the approval of these Rules. The submission of the master list shall be required while the FIRB is developing the online portal for monitoring. Once the database becomes available, the FIRB shall generate the said master list from the online portal. The master list shall be updated within thirty (30) days after the close of each calendar year;
- c. Submit to the BIR the master list in the immediately preceding paragraph, within sixty (60) days after the close of each calendar year; and
- d. Submit to the BIR the ATIR on (i) income-based tax incentives and (ii) VAT incentives and duty exemptions within sixty (60) days from the statutory deadline for filing of Final Adjustment Return and payment of taxes due thereon, if any, of those employing the Calendar Year accounting period.

The IPAs and OGAs administering tax incentives shall include in the said report the ATIRs on income tax, and ATIR on value added tax incentives and duty exemptions of RBEs and OREs employing the Fiscal Year accounting period with fiscal years ending within the subject year. Thus:

Accounting Period	Year Ending On	IPAs shall submit on:
Calendar Year	December 31	June 14 of the following year
Fiscal Year	January - November	June 14 of the following year

- e. Within ten (10) days after the end of each month, the IPA shall submit to the FIRB a list of projects or activities with investment capital of one billion pesos (P1,000,000,000.00) and below that were granted tax incentives. The list shall include the names of the firms, registered projects or activities, location of the registered projects or activities, Certificates of Registration numbers, amounts of investment capital, and types of tax incentives granted.

SECTION 5. Role of the BIR and the BOC. – Notwithstanding any law to the contrary, the BIR and the BOC shall submit, on or before August 15 of every year, to the Department of Finance (DOF): (i) all tax and duty incentives of RBEs and OREs, as reflected in filed tax returns and import entries; and (ii) actual tax and duty incentives as evaluated and determined by the BIR and the BOC.

SECTION 6. *Role of the FIRB.* – The FIRB shall:

- a. Systematically collect and store all tax incentives and benefit data from the DOF, IPAs, OGAs administering tax incentives, RBEs, and OREs;
- b. Evaluate and assess the process, outcomes, and impact of incentives granted to firms to determine whether agreed performance targets and intended results and outcomes are met.
- c. Conduct periodic performance review of all IPAs and OGAs administering incentives in accordance with Section 297(A) of the Code;
- d. Maintain a masterlist of registered products and services for export or domestic consumption that are entitled to incentives;
- e. Publish annually at the per firm level, the data pertaining to the amount of tax incentives, tax payments, and other related information, including benefits data and the result of the CBA in the website of the FIRB not later than September 30 of the current year; and
- f. Submit the result of the CBA and other impact evaluation to the Office of the President and Congress on an annual basis.

SECTION 7. *Role of the DOF.* – The DOF shall:

- a. Maintain a single database for monitoring and analysis of tax incentives granted;
- b. Submit to the FIRB per firm- and per registered project- or activity-level in a machine-readable format: (i) data on tax incentives based on the submissions of registered business enterprises and other registered enterprises; and (ii) other investment- and non-investment-related data, for purposes of conducting an impact evaluation method;
- c. Submit to the Department of Budget and Management (DBM) a per firm and per registered project and activity data arranged on a sectoral and per industry basis: (i) the amount of tax incentives availed of by RBEs and OREs; (ii) the estimate claims of tax incentives immediately preceding the current year; (iii) the programmed tax incentives for the current year; and (iv) the projected tax incentives for the following year; and
- d. Submit to the Joint Congressional Oversight Committee created under Section 9 of RA 10708, the aggregate data categorized by sector, by IPA and by type of tax.

SECTION 8. *Role of the DBM.* – The DBM shall reflect the data submitted by the DOF under Section 3(b) of this Rule in the annual Budget of Expenditures and Sources of Financing (BESF), which shall be known as the Tax Incentives Information (TII) section. The TII shall include a per firm data related to incentives availed of by registered business enterprises and other registered enterprises based on the submissions of the DOF and the concerned IPAs and other government agencies administering tax incentives, categorized as follows:

- a. By sector;
- b. By IPA or other government agency administering tax incentives; and
- c. By type of tax incentive

RULE 12. Conduct of Impact Evaluation on Tax Incentives

SECTION 1. *Conduct of impact evaluation on tax incentives.* – The FIRB Secretariat shall, within six (6) months from the acceptance of the required submissions from all IPAs, OGAs administering tax incentives, RBEs, and OGAs, annually conduct an impact evaluation such as CBA on the investment and non-investment incentives to determine the impact of tax incentives on the Philippine economy.

The FIRB shall, in the conduct of impact evaluation on tax incentives, utilize the following information:

- a. The ATIRs submitted by the RBEs and OREs pursuant to Rule 10 of these Rules;
- b. Per firm and per registered project and activity data submitted by the DOF, IPAs, and OGAs administering incentives pursuant to Section 307 of RA 11534.
- c. Other information and reports, as endorsed by DOF and DTI;
- d. All other information to be identified by the FIRB Secretariat.

The results of the CBA or other impact evaluation methods used by the FIRB, as peer reviewed by a third party when available, shall be considered as an input in the review of the SIPP by the Steering Committee.

SECTION 2. *Third-party peer review.* – A third party government institution may conduct on its own or upon request of the FIRB a peer review of the impact evaluation of the board, or a parallel impact evaluation on the investment and non-investment incentives to determine the impact of the tax incentives on the Philippine economy and on the relevant sector. The FIRB may provide anonymized firm-level data to the third party government institution subject to a data sharing agreement.

SECTION 3. *Penalties for noncompliance with filing of ATIR and ABR.* – Any RBE or ORE which fails to comply with filing and reportorial requirements with the appropriate IPA or OGA administering tax incentives and/or which fails to show proof of filing of tax returns using the electronic system for filing and payment of taxes of the BIR, shall be imposed the following penalties by the appropriate IPA or OGA administering tax incentives:

- a. ***First (1st) violation*** – payment of a fine amounting to One hundred thousand pesos (P100,000.00);
- b. ***Second (2nd) violation*** – payment of a fine amounting to Five hundred thousand pesos (P500,000.00); and
- c. ***Third (3rd) violation*** – cancellation by the FIRB of the registration of the RBE or registered entity with the IPA or OGA administering tax incentives.

If the failure to show such proof is not due to the fault of the RBE or OREs, the same shall not be a ground for the suspension of the ITH and/or other tax incentives availment. Any and all collections from the penalties shall accrue to the general fund.

PART V

FISCAL INCENTIVES REVIEW BOARD (FIRB)

RULE 13. Expanded Functions of the FIRB

SECTION 1. *Policy making and oversight functions, in general.* – The FIRB shall exercise policy making and oversight functions on the administration and grant of tax incentives by the IPAs and other government agencies administering tax incentives. In particular, the FIRB shall:

- a. Determine the target performance metrics as conditions to avail of tax incentives;
- b. Review the compliance of IPAs and other government agencies administering tax incentives, with respect to the administration and grant of tax incentives and impose sanctions such as, but not limited to, withdrawal, suspension, or cancelation of their power to grant tax incentives; and
- c. Determine the minimum contiguous land area that vertical economic zones should comply with.

Vertical economic zones, such as information technology centers or buildings and information technology parks, shall have a compact, contiguous, and adjacent land area. To be considered "contiguous" or "adjacent", the land area of the vertical economic zone shall be adjoining, nearby, abutting, having a common border, connected, or touching along boundaries for considerable distances.

A vertical economic zone need not necessarily constitute a single structure. It may consist of multiple buildings that do not share an indivisible actual, physical connection provided that the said buildings are all located together in the minimum contiguous land area and common areas do not exceed twenty percent (20%) of the minimum contiguous land area.

The minimum contiguous land area for vertical economic zones shall be three thousand (3,000) square meters.

The minimum contiguous land area shall be subject to periodic review by the FIRB every three (3) years.

To qualify as a separate customs territory, the vertical economic zone shall have a permanent customs control or customs office at its perimeter.

- d. Conduct regular monitoring and evaluation of investment and non-investment tax incentives, such as using CBA to determine their impact on the economy and whether agreed performance targets are met;
- e. Check and verify, as necessary, the compliance of registered business enterprises with the terms and conditions of their availment, in particular the agreed performance metrics, rules and regulations of the Act, and other relevant laws or issuances; and
- f. Exercise such other related functions necessary and incidental to its expanded mandate.

SECTION 2. *FIRB oversight functions over IPAs and other government agencies administering tax incentives under Section 297(A).* – All IPAs and other government agencies administering tax incentives are mandated to monitor the compliance of all registered entities within its jurisdiction to the terms and conditions imposed for registration and grant of tax incentives and the reportorial requirements imposed under the Act and these Rules. In case violations or non-compliance are found, the IPAs shall, within fifteen (15) days from the discovery of such violations, report the same to the FIRB and shall recommend the imposition of appropriate disciplinary action or penalty. Failure of the IPAs or other government agencies administering tax

incentives to comply with this requirement shall subject its governing Boards to appropriate administrative penalties and sanctions under existing laws, rules, and regulations.

SECTION 3. *FIRB oversight functions over registered enterprises with tax incentives.* – The FIRB, through the IPAs, shall monitor and review the compliance of registered enterprises with the terms and conditions on the grant of tax incentives and the provisions of the Act and these Rules. The FIRB, upon prior notification to the registered enterprise, and in coordination with the IPA having jurisdiction over the said registered enterprise, shall have the power to verify the documents by conducting an inspection, check, or inventory count for the verification and reconciliation of the records, at any time during office hours at the registered place of business.

SECTION 4. *Power to approve or disapprove the grant of tax incentives.* – To approve or disapprove, the grant of tax incentives to the extent of the registered project or activity upon the recommendation of the IPA. The grant of tax incentives to registered projects or activities with investment capital of one billion pesos (P1,000,000,000.00) and below shall be delegated by the FIRB to the concerned IPA to the extent of the registered project or activity. The FIRB may increase the threshold amount of one billion pesos (P1,000,000,000.00).

SECTION 5. *Power to formulate place-specific strategic investment plans.* – To formulate place-specific strategic investment plans during periods of recovery from calamities and post-conflict situations and where the FIRB determines that there is a need to attract many classes, firms, that would accelerate the growth of a region's flagship industries, in accordance with the medium-term development plan. The FIRB, in consultation with concerned LGUs and IPAs, may formulate and approve place-specific strategic investment plans and recommend incentives to the President, following the same procedure in Section 297(M) of the Code.

SECTION 6. *Power to Cancel, Suspend, or Withdraw the Enjoyment of Tax Incentives.* – The FIRB may cancel, suspend, or withdraw, on its own initiative or upon the recommendation of the IPA after due process, the enjoyment of fiscal incentives granted to qualified recipients in the following instances:

- a. Non-compliance with the agreed performance targets or material violation of any of the conditions imposed in the grant of fiscal incentives or tax;
- b. Material misrepresentation of information for the purpose of availing more incentives than what it is entitled to under the Code; or
- c. Non-compliance of the registered business enterprise with the reportorial requirement under Rule 10, Section 2 of this IRR.

SECTION 7. *Power to require submission of incentives and benefits data.* – To require IPAs and other government agencies administering tax incentives to submit, regularly or when requested, summaries of approved investment and incentives granted, and firm- or entity-level tax incentives and benefits data as input to the FIRB's review and audit function, and evaluation of performance of recipients of tax incentives pursuant to Section 305 of this Code. For this purpose, the FIRB shall maintain a masterlist of registered products and services for export or domestic consumption that are entitled to incentives. To facilitate compliance with the foregoing, the DTI, in coordination with relevant regulatory bodies, shall cause the registration and reporting by registered business enterprises of the types of services rendered whether domestically or to foreign clients; types of products manufactured domestically, products imported and sold locally, and products exported.

SECTION 8. *Authority to publish incentives and benefits data.* – To publish regularly, per firm,

the data pertaining to the amount of tax incentives, tax payments, and other related information, including benefits data;

SECTION 9. *Power to recommend the grant of non-fiscal incentives for highly desirable projects.*

– To recommend to the President the grant of appropriate non-fiscal incentives in accordance with the SIPP for highly desirable projects or very specific industrial activities and based on: (a) cost-benefit analysis approved by the FIRB; and (b) containing a schedule of budget of expenditures and sources of financing with magnitudes provisionally approved via resolution for inclusion in the upcoming national expenditure plans by the DBCC.

SECTION 10. *Power to adopt policies for supply chain development and expansion.*

– To adopt policies for the development and expansion of the domestic supply chain in order to reduce dependence on imports; promote diversification and sophistication of products produced and services offered, whether exported or consumed locally; and cater to local market demand.

SECTION 11. *Power to approve application for tax subsidies.*

– To approve applications for tax subsidies to GOCCs, GIs, government commissaries, and SUCs. For this purpose, other government agencies shall ensure complete submission of applications, documents, records, books, or other data relevant or material.

SECTION 12. *Power to cancel, suspend, or withdraw the enjoyment of tax subsidy.*

– The FIRB may cancel, suspend, or withdraw, on its own initiative or upon the recommendation of the BIR, BOC, and DBM, after due process, the enjoyment of tax subsidy of concerned GOCCs, GIs, government commissaries, and SUCs in the following instances:

- a. Misrepresentation or any fraudulent transaction or importation concerning the tax subsidy application;
- b. Any attempt to transfer or manipulate the issued CES;
- c. Use of the tax subsidy for purposes other than the mandated function/s of the applicant agency or the specific project or transaction as stated in the justification for tax subsidy application; and
- d. Non-compliance with the conditions and reportorial requirements under the Act or these Rules in the grant of tax subsidy.

The FIRB shall decide on the matter within ninety (90) days from the date when the Board declares the issues submitted for resolution. A business enterprise adversely affected by the decision of the FIRB may, within thirty (30) days from receipt of the adverse decision, appeal the same to the Court of Tax Appeals.

SECTION 13. *Submission of annual report to President.*

– To submit annual reports to the Office of the President, as part of the budget process, covering its policy and activities in the administration of the Act, including recommendations on tax incentive policies and approval of tax incentives.

SECTION 14. *Evaluation of tax incentives granted to registered entities.*

– The FIRB is mandated to conduct an annual evaluation of tax incentives granted to registered entities using CBA, or any other impact evaluation methods deemed appropriate, to determine the impact of fiscal incentives to the economy and to determine whether agreed performance targets are met.

The FIRB shall prepare a standard data-entry template or develop a system that will be used to facilitate the submission of the information required. It shall also establish a single database for monitoring and analysis of fiscal incentives granted.

SECTION 15. *Power to formulate rules and regulations.*

– To promulgate such rules and

regulations as may be necessary to implement the intent and provisions of its expanded functions and all other powers necessary or incidental thereto.

SECTION 16. *Exercise all necessary powers.* Exercise all necessary and incidental powers in accordance with its expanded functions. - The FIRB may exercise all other powers necessary and incidental to the accomplishment of its expanded functions pursuant to this Act, including but not limited to the promulgation of rules and regulations implementing the provisions pertinent to such additional functions.

RULE 14. Fiscal Incentives Review Board Proper

SECTION 1. *Composition.* – The Board shall be composed of the Secretary of Finance as Chairperson, the Secretary of Trade and Industry as Co-Chairperson, and three (3) members consisting of: (1) the Executive Secretary of the Office of the President; (2) the Secretary of Budget and Management; and (3) the NEDA Director General.

SECTION 2. *Powers and functions of the Chairperson.* – The Chairperson of the Board shall have the following powers and functions:

- a. Provide leadership and ensure the effective functioning of the Board;
- b. Call meetings, approve and set the agenda, and preside over Board meetings where all Board members are enabled and encouraged to actively participate in all discussions and resolutions on matters taken up by the Board;
- c. Exercise control over quality, quantity, and timeliness of the flow of information among the Secretariat, Technical Committee, and the Board;
- d. Assist in ensuring compliance with guidelines on good governance;
- e. Ensure that the Board makes an informed decision through a sound process that incorporates relevant facts and data; and
- f. Exercise such other powers and duties as may be vested by the Board pursuant to its functions and mandate.

In the absence of the Chairperson, the Chairperson may delegate in writing to the Co-chair the exercise of the powers and duties vested in the Chairperson, subject to such limitations and restrictions as the Chairperson may impose.

SECTION 3. *Meetings and quorum.* – The Board shall meet at least once a month, or as needed on such a day and time as it may fix. The Chairperson may *motu proprio* call for a special meeting, or at the instance of the majority of the members of the Board. The presence of at least three (3) members shall constitute a quorum. The Board shall adopt rules and procedures for the conduct of meetings.

For exigent reasons, the Board and the Technical Committee may meet jointly on such a day and time as they may deem necessary. For a joint meeting to be valid, the requirement of a separate quorum should be met.

RULE 15. Fiscal Incentives Review Board Technical Committee

SECTION 1. *Composition.* – The Technical Committee shall be composed of the following:

- (1) Undersecretary of Finance, as Chairperson;
- (2) Undersecretary or Assistant Secretary of the Office of the Executive Secretary;
- (3) Undersecretary of Trade and Industry and Board of Investment Managing Head, or Assistant Secretary of Trade and Industry;
- (4) Undersecretary or Assistant Secretary of Budget and Management;
- (5) NEDA Deputy or Assistant Director General;
- (6) Commissioner or Deputy Commissioner of Internal Revenue;
- (7) Commissioner or Deputy Commissioner of Customs;
- (8) Commissioner of the Philippine Competition Commission (PCC); and
- (9) Director General, or Chairperson, or Administrator of the IPAs.

The participation of the IPA representative in the meetings shall be limited to the agenda item concerning their respective IPAs. The IPA representatives shall in no way be allowed to be present in the deliberation or decision-making process of matters that do not concern their IPAs.

SECTION 2. *Roles and Responsibilities of the Technical Committee.* – The Technical Committee shall serve as the Board Proper’s main support unit and shall have the following roles and responsibilities:

- a. To review the Secretariat’s evaluation report on applications for tax incentives or tax subsidies and other pertinent matters submitted to it by the Secretariat;
- b. To recommend to the Board the approval, disapproval, suspension, or withdrawal of tax incentives or tax subsidies and pertinent matters relative thereto;
- c. To perform functions as may be assigned or delegated to it by the Board; and
- d. To assist the Board in the effective discharge of its functions and recommend other policies and measures deemed necessary to carry out the objectives of the Act.

SECTION 3. *Meetings and Quorum.* – The Technical Committee shall meet at least once every month or on such a day and time as it may deem necessary. The presence of at least five (5) members shall constitute a quorum. The Technical Committee shall adopt rules and procedures for the conduct of its meetings.

RULE 16. Fiscal Incentives Review Board Secretariat

SECTION 1. *Composition and Responsibilities of the Secretariat.* – The Secretariat shall be headed by an Assistant Secretary of Finance and shall be staffed by the National Tax Research Center (NTRC). The NTRC, as Secretariat of the FIRB, shall be composed of and perform the following responsibilities:

- A. Fiscal Incentives Management Group (FIMG).** – The FIMG provides technical assistance in the proceedings, processing of tax incentives and tax subsidies and initial evaluation of investment promotion agencies (IPAs) recommendations and *ex-ante* CBA, coordinates with the members of the FIRB Board Proper and Technical Committee, IPAs, GOCCs, and other government agencies (OGAs) administering tax incentives.
 1. **Processing Division A** – processes incentive applications of RBEs for projects with investment capital above P1 billion, including the initial evaluation of the IPA recommendation and review of *ex-ante* CBA.
 2. **Processing Division B** – processes applications for tax subsidies and applications of

GOCCs, state universities and colleges, government commissaries, and government instrumentalities, and applications for tax incentives of RBEs to be granted by the President including the initial evaluation of the IPA recommendation and review of *ex-ante* CBA.

3. **Board Support Division** - provides technical assistance and support for all FIRB proceedings such as, but not limited to, coordination with members of the FIRB board proper, technical committee members, and IPAs; prepares and transmits board resolutions; and works with other groups and divisions of the FIRB secretariat and FIRB member agencies to ensure that matters raised in the board are ready for board decision.
- B. **Monitoring and Evaluation Group (MEG).** - The MEG monitors and evaluates IPAs, registered business enterprises (RBEs), OGAs with respect to administration and grant of tax incentives, OREs, conducts cost-benefit analysis (CBA), other processes and impact evaluation methods to calculate the net benefit or cost associated with tax incentives, and provides summaries of performance metrics per IPA.
1. **Monitoring and Evaluation Division A** – monitors and evaluates compliance of OREs and RBEs under Tiers I and II of SIPP on their target performance metrics, conducts *ex-post* CBA, other process and impact evaluation methods and check and verify their compliance with the rules and regulations of Title XIII of the National Internal Revenue Code (NIRC), as amended, and other relevant laws, issuances and regulations.
 2. **Monitoring and Evaluation Division B** – monitors and evaluates compliance of OREs and RBEs under Tiers III and critical industries of SIPP on their target performance metrics, conducts *ex-post* CBA and impact evaluation methods and check and verify their compliance with the rules and regulations of Title XIII of the National Internal Revenue Code (NIRC), as amended, and other relevant laws, issuances and regulations.
 3. **Monitoring and Evaluation Division C** - monitors and evaluates compliance of GOCCs, SUCs, government commissaries and government instrumentalities on their utilization of tax subsidies, and IPAs and other government agencies administering tax incentives on their administration and grant of incentives; and check and verify their compliance with the rules and regulations of Title XIII of the National Internal Revenue Code (NIRC), as amended, and other relevant laws, issuances and regulations.
- C. **Legal Group (LG).** - The Legal Group assists the FIRB and the NTRC on all legal issues arising from the approval and disapproval of tax incentives and the suspension, withdrawal or cancellation of tax incentives and tax subsidy. The Group also provides legal opinions and/or technical papers on any legal issues that may be required by the FIRB and NTRC.
1. **Legal Research and Communication Division** – prepares studies and/or position papers on the legal aspect of taxation, tax incentives and tax subsidies, fees and charges, and other legal issues that may be required by the FIRB and NTRC; compiles all legal documents, records, laws, resolutions, circulars pertaining to the FIRB; and media monitoring and crisis communications, as needed.
 2. **Legal Management Division** – provides legal support, drafts legal opinions, and assists the FIRB on the resolution of legal issues arising from the approval and disapproval of tax incentives and tax subsidy, and the suspension, withdrawal or cancellation of tax incentives and tax subsidy.

In addition to the foregoing, the Board, Technical Committee, or the Assistant Secretary of Finance may assign other duties and responsibilities to the Secretariat.

SECTION 3. Powers and Functions of the Head of Secretariat. – The Head of the Secretariat shall have the following powers and functions:

- a. To execute and administer the policies and measures approved by the Board and take responsibility for the efficient and effective discharge of management functions;
- b. To direct and supervise the operation and internal administration of the FIRB;
- c. To cause the preparation of an annual report to the President on the activities and achievement of the FIRB;
- d. To represent the FIRB in all dealings and transactions with other offices, agencies, and instrumentalities of the national government and with persons and other entities, private or public, domestic or foreign, as may be authorized by the Board; and
- e. To exercise such other powers and duties as may be vested by the Board pursuant to its functions and mandate.

PART VI

Rule 17. TRANSITORY AND MISCELLANEOUS PROVISIONS

SECTION 1. Qualification for Registration. – Existing registered projects of activities prior to effectivity of this Act may qualify to register and avail of the incentives granted under this Act for the prescribed period, subject to the criteria and conditions set forth in the strategic investments priority plan; provided that the RBE shall surrender its certificate of registration or certificate of tax incentives, as applicable. *Provided, finally*, that for project or activity with investment capital of more than one billion pesos (>₱1,000,000,000), the existing RBEs shall be registered pursuant to Rule 5 of this IRR.

SECTION 2. Entitlement to Duty Exemption on Importation of Capital Equipment, Raw Materials, Spare Parts or Accessories. – Existing RBEs with valid Certificate of Authority to Import (CAI) or Admission Entry whose capital equipment, raw materials, spare parts or accessories were ordered, as reflected in the date of the purchase order or on the date of the opening of the corresponding letters of credit; or loaded, as reflected in the bill of lading date; or are still in transit during the effectivity of Executive Order 85, Series of 2019, shall qualify for the duty exemption until the expiration of the CAI/Admission Entry or the transitory period under Section 311 of the code.

RULE 18. Investments prior to the effectivity of the Act

SECTION 1. Projects or activities granted only an ITH. – Registered business enterprises whose projects or activities were granted only an ITH prior to the effectivity of this Act shall be allowed to continue with the availment thereof for the remaining period of the ITH as specified in the terms and conditions of their registration: *Provided*, that for those that have been granted the ITH but have not yet availed of the incentive upon the effectivity of this Act, they may use the ITH for the period specified in the terms and conditions of their registration.

SECTION 2. Projects or activities granted an ITH and are entitled to the five percent (5%) tax on gross income earned. – Registered business enterprises whose projects or activities were granted

an ITH prior to the effectivity of this Act and that are entitled to the five percent (5%) tax on gross income earned incentive after the ITH be allowed to use the ITH for the period specified in the terms and conditions of their registration and thereafter, avail of the five percent (5%) tax on gross income earned incentive, subject to the 10 year limit for both incentives under this Act.

SECTION 3. *Registered business enterprises currently availing of the five percent (5%) tax on gross income earned.* – Registered business enterprises currently availing of the five percent (5%) tax on gross income earned granted prior to the effectivity of this Act shall be allowed to continue availing the said tax incentive at the rate of five percent (5%) for ten (10) years.

SECTION 4. *Allocation of gross income earned.* – If applicable, the allocation of shares for LGUs and IPAs as specified in the latter’s governing laws shall be observed and shall not result in the diminution of their respective shares.

SECTION 5. *Non-income related tax incentives.* – All registered business enterprises that will continue to avail their existing tax incentives subject to Sections 1, 2 and 3 of these Rules may continue to enjoy the duty exemption until the expiration of the CAI/Admission Entry or until the expiration of the transitory period under Section 311 of the Code. Provided that only export sales of goods and services by VAT-registered RBEs shall remain to be subject to zero percent (0%) VAT rate: Provided, further, transactions falling under Section 106(A)(2)(a)(3), (4), and (5) and Section 108(B)(1) and (5) of the NIRC, as amended, shall be subject to the twelve percent (12%) VAT: Provided, finally, that the VAT zero-rating and exemption shall only apply to purchases of goods and/or services directly and exclusively used in the registered project or activity of the RBE, during the period of registration of the said registered project or activity with the concerned IPA.

After the expiration of the transitory period under Section 311 and without prejudice to Rule 3 Section 3, all applicable taxes shall apply.

RULE 19. Prohibition on registered activities.

SECTION 1. *General Rule.* – A qualified registered project or activity under an IPA administering an economic zone or freeport shall be exclusively conducted or operated within the geographical boundaries of the zone or freeport being administered by the IPA in which the project or activity is registered: *Provided*, that a registered business enterprise may conduct or operate more than one qualified registered project or activity within the same zone or freeport under the same IPA: *Provided, further*, that any project or activity conducted or performed outside the geographical boundaries of the zone or freeport shall not be entitled to the incentives provided in this Act, unless such project or activity is registered under another IPA outside the economic zone or freeport.

SECTION 2. *Registration of existing RBEs under CREATE.* – The application for incentives or existing RBEs that have opted to register under CREATE and surrendered their COR or RBEs that have completed their 10-year transition period shall be submitted to and processed by the IPA that administers the economic zones or freeports where the RBEs conduct their registered project or activity. In no case can an IPA grant and administer incentives outside of its own economic zone or Freeport.

RULE 20. One-Stop Action Center

SECTION 1. *Establishment of one-stop action center.* – All IPAs shall establish a one-stop shop or one-stop action center to be composed of representatives from all concerned government agencies and supported by additional manpower, and equipment, to facilitate and expedite, to the extent possible, the setting up and conduct of registered projects or activities, and other pre-

investment concerns to comply with the “Ease of Doing business and Efficient Government Service Delivery Act of 2018”: Provided, however, that the enterprises may continue to avail of the one-stop shop facility for aftercare/post-investment services notwithstanding the expiration of their incentive years under the Code. To the extent possible, a virtual one-stop shop or one stop action center may be established.

SECTION 2. *Period to establish a one-stop action center.* – Subject to budgetary support and available resources, all IPAs shall establish a one-stop action center or expand the services of their existing one-stop action center thru a physical or virtual set-up to comply with the preceding Section of these Rules within one year from the effectivity of these Rules.

RULE 21. Forms and Certificates

SECTION 1. All forms and certificates under these Rules shall be prescribed by the FIRB, in coordination with the DTI.

RULE 22. Misrepresentation and violation of other provisions of the Code

SECTION 1. *Misrepresentation of information for the purpose of availing of incentives.* – After due notice and hearing, the FIRB or the concerned IPA, as the case may be, may cancel the registration, suspend the enjoyment of incentive benefits of any registered enterprise and/or require refund of incentives enjoyed by such enterprise, including interests and monetary penalties, for any misrepresentation of information for the purpose of availing more incentives than what it is entitled to under the Act.

SECTION 2. *Violation of other provisions of the Act.* – The FIRB, with the recommendation of the Commissioner, may revoke or suspend incentives granted by an IPA and/or order a business closure of a registered business enterprise that violates Title VI (Excise Taxes on Certain Goods) and Title X (Statutory Offenses and Penalties) of the Code and other related revenue regulations, orders, or issuances of the government: *Provided, further,* that such authority shall cover the acts of the RBE committed even in the first year of availment of incentives. Notwithstanding the provisions of this Section, the DOF, BIR, and BOC shall retain all its respective mandates, powers and functions as provided for under this act and related laws.

SECTION 3. *Observance of due process.* – No penalty shall be imposed upon the IPAs, OGAs, RBEs, OREs or any responsible officer for failure to comply with the requirements under the Act or these Rules, unless the latter was informed in writing of such violation. The FIRB shall issue a show cause order to the IPAs, OGAs, RBEs, OREs, or any responsible officer requiring the latter to explain in writing the reason(s) for its non-compliance. The IPAs, OGAs, RBEs, OREs or any responsible officer shall file with the Secretariat a response within fifteen (15) days from the receipt of such order. If the IPAs, OGAs, RBEs, OREs or any responsible officer fails to reply within the period specified, the FIRB shall proceed to decide based on its findings.

SECTION 4. *Effect of cancellation, suspension, or withdrawal of fiscal incentives or tax subsidy.* – In case of cancellation, suspension, or withdrawal of the CETI or CES, the FIRB shall require the payment of taxes, customs duties and any applicable penalties thereon to the appropriate RCA.

RULE 23. Final Provisions

SECTION 1. *Web-based tax incentives and subsidies applications and monitoring system.* – Pending the establishment of a portal for the electronic filing of application and submission of reports, all applications, reports, and communications under the jurisdiction of the FIRB will be

coursed through the official email of the FIRB Secretariat. Likewise, all resolutions, decisions, and communications of the FIRB will be sent by email to the concerned parties.

The FIRB will issue a separate Rule for the adoption and utilization of a web-based system for tax incentives and subsidies applications and monitoring, once established. Access to the submitted data and information relevant to the IPA concerned through the web-based tax incentives and subsidies applications and monitoring system shall be provided and made available to the said concerned IPA.

SECTION 2. *Review of Rules and Regulation.* – The FIRB shall conduct a general review of their rules, policies and programs in relation with these Rules, as may be necessary.

SECTION 3. *Separability Clause.* – If any provision of these Rules is subsequently declared invalid or unconstitutional, other provisions hereof which are not affected shall remain in full force and effect.

SECTION 4. *Effectivity.* – These Rules shall take effect immediately upon publication in a newspaper of general circulation.