

SENATE

'13 JUL 30 P 4 02

S. No. 1187

Introduced by Senator Ralph G. Recto

Explanatory Note

It is the policy of the State to attract, promote, and welcome productive investments from foreign individuals, partnerships, corporations, and governments, including their political subdivisions, in activities which significantly contribute to national industrialization and socioeconomic development to the extent that foreign investment is allowed in such activity by the Constitution and relevant laws.

Likewise, it is the policy of the State to promote fiscal prudence and transparency in the proper administration and grant of tax incentives by developing means to measure the government's fiscal exposure from these foregone revenues and to enable the government to analyze and rationalize the fiscal cost and at the same time optimize the economic impact and benefit incidence of such incentives.

Republic Act (R.A.) No. 7042 otherwise known as the Foreign Investments Act (FIA) of 1991, as amended by R.A. 8179, is the basic law that governs foreign entities in economic and commercial activities in the Philippines. The FIA is considered a landmark legislation because it opened the domestic market to foreign investments and offered a broad array of tax breaks and incentives to businesses recognized as a preferred area of investment.¹

Investment Promotions Agencies such as the Board of Investments (BOI), Philippine Economic Zone Authority (PEZA) and Bases Conversion Development Authority (BCDA) are legally empowered to promote investments and grant incentives to investors registered with them. Department of Trade and Industry data shows a 35% increase in net foreign direct investments from US\$ 1,816 Million in 2011 to US\$ 2,797 Million in 2012.² However, the bulk of tax incentives granted to these business entities are not accounted for. Hence, the magnitude of these incentives which translates to the government's foregone revenues remains largely unknown. Another problem brought by the lack of a monitoring system of the IPAs is that they do not generate adequate information on the scope, cost, or effects on investment and the economy of these incentives. Thus, government efforts should be directed at improving, more broadly, the monitoring system for the tax incentives granted by the IPAs and other government agencies so that the sectors benefiting from the reduced rate can be easily and objectively identified, to ensure transparency and avoid discretion on the part of the authorities.

The proposed legislation's primary objective is to address this serious information gap in line with the President's 'Tuwid na Daan' advocacy. The Department of Finance (DOF), in coordination with the Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC), shall implement stricter monitoring procedures by creating a Tax Incentives Tracking Program. Failure by the registered businesses to comply with the reportorial requirements shall be a ground for the suspension of the incentives that they enjoy for the particular taxable year, while repeated violation shall be a ground for the cancellation of the enterprise's registration.

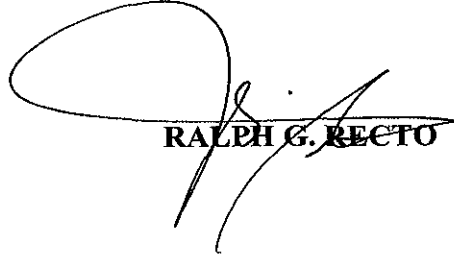
A consolidated annual Tax Incentive Report shall be submitted to the President and to the Chairmen of the Committees on Appropriations/Finance of both houses of Congress as part of the

¹ Board of Investments. Primer of Doing Business in the Philippines. 2010.

² Department of Trade and Industry. Quickstats.2013.

annual Budget of Expenditures and Sources of Financing (BESF). Further, in order to enhance government accountability, the DOF, BIR and BOC, shall jointly conduct an annual evaluation to determine the impact of the tax incentives on the Philippine economy.

With the foregoing considered, immediate approval of this bill is requested.



RALPH G. RECTO

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S. No. 1187

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**AN ACT
ESTABLISHING A SYSTEM FOR TAX INCENTIVES TRANSPARENCY, AND FOR
OTHER PURPOSES**

*Be it enacted by the Senate and House of Representatives of the Philippines in
Congress assembled:*

1 **SECTION 1. Title.** – This Act shall be known as "The Tax Incentives Transparency
2 Act."

3 **SEC. 2. Declaration of Investment Policies.** – It is hereby declared the policy of the State
4 to promote fiscal prudence and transparency in the proper management and grant of tax
5 incentives by developing means to measure the government's fiscal exposure from these
6 foregone revenues and to enable the government to analyze and rationalize the fiscal cost and at
7 the same time optimize the economic impact and benefit incidence of such incentives.

8 **SEC. 3. Definition of Terms.** – As used herein, the following shall mean:

9 (a) "*Investment Promotions Agencies (IPAs)*" shall refer to government entities created
10 by law, executive order, decree or other issuance, in charge of promoting investments,
11 administering tax and non-tax incentives, and/or overseeing the operations of the different
12 economic zones and freeports in accordance with their respective charters. These include the
13 Board of Investments (BOI), Philippine Economic Zone Authority (PEZA), Bases Conversion
14 Development Authority (BCDA), Subic Bay Metropolitan Authority (SBMA), Clark
15 Development Corporation (CDC), Poro Point Management Corporation (PPMC), Bataan
16 Technology Park, Inc. (BTPI), Cagayan Economic Zone Authority (CEZA), Zamboanga City
17 Special Economic Zone Authority (ZCSEZA), Phividec Industrial Authority (PIA), Aurora
18 Pacific Economic Zone and Freeport Authority (APECO), Authority of the Freeport Area of
19 Bataan (AFAB), Tourism Infrastructure And Enterprise Zone Authority (TIEZA), and all other
20 similar authorities that may be created by law in the future.

21 (b) "*Other Government Agencies*" shall refer to government agencies other than IPAs
22 which administer tax exemptions of any kind to any specific entities and/or class of persons by
23 reason of any law.

24 (c) "*Tax Incentives*" shall refer to grants of fiscal incentives which come in the form of
25 income tax holiday, exemption, deduction, credit or exclusion from the tax base that is tied to a
26 specific provision in tax law to qualified firms relative to the nature of business or client location

1 and registration of the proposed investment project to entice foreign capital and technology that
2 complements local sources.

3 (d) "*Tax Incentives Tracking Program*" shall refer to the single database which shall be
4 used by the Department of Finance (DOF), Bureau of Internal Revenue (BIR), Bureau of
5 Customs (BOC) and Investment Promotions Agencies (IPAs) in monitoring the incentives
6 granted to IPA-registered business entities.

7 **SEC. 4. *Accounting of Tax Incentives.*** - The amounts pertaining to tax incentives
8 administered by IPAs and other government agencies to private individuals and corporations
9 shall be specified in accordance with a schedule to be prepared by the Department of Finance
10 (DOF). Tax incentives administered by the relevant IPAs and/or other government agencies shall
11 be reflected in the Tax Incentive Information provided in Section 5 of this Act.

12 **SEC. 5. *Tax Incentive Information (TII).*** - For purposes of accounting and transparency,
13 a section shall be created in the annual Budget of Expenditures and Sources of Financing
14 (BESF), from which tax incentives, as may be determined by the IPAs and other government
15 agencies in accordance with law, are accounted. Notwithstanding the provisions of their
16 respective charters, IPAs and other government agencies concerned shall account in the TII all
17 tax incentives granted.

18 **SEC. 6. *Administration, Implementation and Monitoring of Tax Incentives.*** - Registered
19 enterprises shall file a complete annual Tax Incentive Report to the IPAs or government agencies
20 administering the grant of incentives. The IPAs and other government agencies concerned shall
21 submit to the DOF their respective consolidated annual Tax Incentive Report reflecting the total
22 tax incentives granted to registered enterprises or to special groups, as the case may be, and other
23 data related to the grant of such incentives as may be required by the DOF.

24 In fulfilling the foregoing requirements, the IPAs and other government agencies shall
25 also be subject to the power of the Commissioner to obtain information and to summon, examine
26 and take testimony of persons under Section 5 of the National Internal Revenue Code (NIRC) of
27 1997, as amended.

28 The DOF, together with the BIR and the BOC, shall create a Tax Incentives Tracking
29 Program of all tax incentives granted by the IPAs and other government agencies, monitor the
30 incentives granted, and submit an annual Tax Incentive Report to the President and to the
31 Chairmen of the Committees on Appropriations and on Finance of both houses of Congress as
32 part of the annual BESF.

33 The Tax Incentives Tracking Program shall be used by the DOF, BIR and BOC to
34 monitor tax incentives granted by the IPAs and other government agencies; project tax incentives
35 for future years and to conduct an annual evaluation study to determine the impacts of the tax
36 incentives on the Philippine economy: *Provided*, That the monitoring function of the DOF, BIR
37 and BOC shall incorporate those companies whose incentives have expired in order to assess

1 whether tax incentives in the Philippines provide benefits that extend beyond the duration of the
2 incentives.

3 **SEC. 7. *Non-compliance with Reportorial Requirements and Penalties.*** – The failure of a
4 registered enterprise to submit a complete annual Tax Incentive Report shall prompt the IPAs or
5 other government agencies concerned to declare immediate suspension of the incentives that they
6 enjoy for the particular taxable year. Repeated violation shall be penalized with the cancellation
7 of the enterprise's registration.

8 The DOF shall issue to the IPAs or other government agencies concerned a notice of non-
9 compliance with this Act and its implementing rules and regulations, and direct the latter to
10 explain its failure to comply and the actions it took to address such failure. If the failure can be
11 attributable to the fault of a registered enterprise, the IPAs or other government agencies
12 concerned, shall state such fact in its explanation, attach supporting documents (such as official
13 requests for submission), and cause the issuance of a notice of violation of registration terms and
14 conditions against the registered enterprise.

15 The erring registered enterprise shall then be subject to the aforementioned penalties, the
16 terms of and procedure for which shall be prepared by the IPAs and other government agencies
17 for inclusion in the implementing rules and regulations of this Act, in addition to the applicable
18 penalties provided for under the NIRC of 1997, as amended.

19 **SEC. 8. *Implementing Rules and Regulations.*** - The DOF, in coordination with the
20 DBM, BIR and BOC, and in consultation with all IPAs and other government agencies
21 concerned, shall, within sixty (60) days from the effectivity of this Act, jointly promulgate rules
22 and regulations to implement the provisions of this Act.

23 **SEC. 9. *Separability Clause.*** - In the event that any provision of this Act is declared
24 invalid, the other provisions of the Act which are not affected thereby shall remain in force and
25 effect.

26 **SEC. 10. *Effectivity.*** – This Act shall take effect fifteen (15) days from the date of
27 publication in the Official Gazette or in at least two (2) newspapers of general circulation.

Approved,