

# TAXAND ASIA UPDATES

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**THURSDAY 27 MAY 2021**

**Your global tax partner**

**INDIA**

**MITESH JAIN**  

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**ECONOMIC LAWS PRACTICE**

# INDIA TAX – RECENT DEVELOPMENTS



## Thresholds for significant economic presence in India defined now

- ❖ Recently, Significant economic presence ('SEP') of non-resident constituting business connection in India was introduced under Indian tax laws
- ❖ SEP is defined to mean:
  - Transaction in respect of any goods, services or property carried out by a non-resident in India, including the provision of download of data or software in India, subject to payment threshold to be prescribed; or
  - Systematic and continuous soliciting of business activities or engaging in interaction with such number of users as may be prescribed, in India through digital means
- ❖ Threshold for significant economic presence are now notified as under:
  - Transaction threshold - if aggregate payment exceeds INR 20 million (approx. USD 250k); or
  - User threshold – if it exceeds 300k users in India

# INDIA TAX – RECENT DEVELOPMENTS



## Extension of statutory timelines

In view of the severe pandemic, the CBDT has provided relaxation for the following income-tax compliances

PARTICULARS	ERSTWHILE DUE DATE	REVISED DUE DATE
Appeal to Commissioner of Income-tax (Appeals)	April 1, 2021 or later	May 31, 2021
Objection before Dispute Resolution Panel	April 1, 2021 or later	May 31, 2021
Return of income in response to notice under reassessment proceedings	April 1, 2021 or later	May 31, 2021
Belated and revised return of income for Financial Year (FY) 2019-20	March 31, 2021	May 31, 2021
Furnishing Statement of Financial Transactions for FY 2020-21	May 31, 2021	June 30, 2021
Filing withholding tax return for quarter ending March 2021	May 31, 2021	June 30, 2021
Statement of income paid/ credited by an investment fund to its unit holder for FY 2020-21	June 15, 2021 & June 30, 2021	June 30, 2021 & July 15, 2021
Furnishing return of income for FY 2020-21	July 31/ October 31/ November 30, 2021	September 30/November 30/ December 31, 2021
Furnishing tax audit report for FY 2020-21	September 30, 2021	October 31, 2021
Furnishing transfer pricing report	October 31, 2021	November 30, 2021
Belated and revised return of income for FY 2020-21	December 31, 2021	January 31, 2022

# INDIA TAX – RECENT JUDICIAL PRECEDENTS



## Payment for use of computer software is not royalty

- ❖ Hon'ble Supreme Court in its landmark ruling has held that amounts paid by resident Indian end-users to non-resident computer software manufacturers/suppliers, as a consideration for resale/use of computer software is not royalty.
- ❖ The Court examined provisions of the Indian Copyright Act, 1957 and remarked that making copies or adaptation of a computer program, to utilize it for the purpose for which it was supplied or to make back-up copies as a temporary protection against loss/ damage does not constitute an act of infringement of copyright.
- ❖ The Court on a reading of the EULA held that what was granted to the distributor was only a non-exclusive, non-transferable license to resell computer software and there was no further right to sub-license or transfer.
- ❖ The Court also noted that definition of royalty under the domestic law was amended in 2012 to provide that transfer of all or any rights includes transfer of all or any rights for use of a computer software. However, such payments would not qualify as royalty for the purposes of Tax Treaty in absence of specific amendment to the Tax Treaty.

# INDIA TAX – RECENT JUDICIAL PRECEDENTS



## Reduction of US company's royalty income permitted basis APA signed by Indian AE

- ❖ Recently, the court accepted taxpayer's contention that royalty amount refunded to its Indian AE on the basis of an APA, cannot be treated as income of taxpayer.
- ❖ The taxpayer had received royalty from Indian AE which were offered to tax in India on gross basis under Article 12 of the India-US DTAA. While the finalization of its tax liability was still pending before income-tax authorities, the India AE had approached for an APA.
- ❖ The net result of the APA was that royalties which were received by taxpayer from AE were required to be partially refunded to AE. The court observed that one of the fundamental assumptions of the APA was partial recovery of royalty from taxpayer and hence adjustments made in quantum of royalty by taxpayer cannot be questioned.
- ❖ The court observed that taxpayer can only be taxed on its "real income" and not hypothetical income which has been refunded to the payer of royalty.
- ❖ The court also discussed the scope and impact of secondary adjustments in detail and observed that it is not correct to say that no refund of taxes could be claimed or allowed on account of secondary adjustments even if, for example, as in this case, such secondary adjustments end up reducing the income of the taxpayer as a result of partial repatriation of income.



# INDONESIA

**HENRIETTA KRISTANTO**  

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**PB TAXAND**



# HOT TOPICS



**Indonesia to propose fresh tax amnesty plan, minister says**  
 Indonesia will propose another tax amnesty plan in upcoming talks with lawmakers about tax law revisions, Chief Economic Affairs Minister ...  
[www.channelnewsasia.com](http://www.channelnewsasia.com)

<https://www.channelnewsasia.com/news/business/fresh-tax-amnesty-plan--minister-says-14841>

**Jokowi Kirim Surat ke DPR, Minta Presiden Jokowi telah berkirim surat undang (UU) Ketentuan Umum Perpajakan**  
[finance.detik.com](http://finance.detik.com)

<https://finance.detik.com/berita-ekonomi-bisnis/surat-kex-dpr-minta-tax-amnesty-jilid-ii-dibaca>

**Indonesia considering carbon tax document**  
 Indonesia has drawn up proposals  
[www.channelnewsasia.com](http://www.channelnewsasia.com)

<https://www.channelnewsasia.com/news/business/carbon-tax-under-major-tax-overhaul---document>

**Kebijakan Sri Mulyani: PPN Naik**  
 Wacana untuk kembali memberlakukan (tax amnesty) mengemuka.  
[www.cnbcindonesia.com](http://www.cnbcindonesia.com)

<https://www.cnbcindonesia.com/news/2021/sri-mulyani-ppn-naik-pph-diubah-tax-amnesty>

**Sri Mulyani akan ubah tarif PPh pendapatan kena pajak**  
 Pemerintah tengah mengatur strategi nasional.  
[kontan.co.id](http://kontan.co.id)

<https://nasional.kontan.co.id/news/sri-mulyani-pribadi-dan-tambah-layer-pendapatan-kena-pajak>

**Bisnis.com**  
 Market Finansial Ekonomi Tel  
**RANCANGAN PENGAMPUNAN PAJAK Sanksi Denda 200% Baku Dihapus**  
 24 Mei 2021 - 02:00 WIB | Koran

**PAJAK MINIMUM GLOBAL Energi Baru Proposal PPN Sam**  
 24 Mei 2021 - 02:00 WIB | Koran

**Tax Amnesty Jilid II: Obr Diskon bagi 'Pendosa' P**  
 23 Mei 2021 - 12:08 WIB | Kabar24

**Tax Amnesty II, Anggota Fraksi PKS DPR: Yang Pertama Saja Gagal**  
 23 Mei 2021 - 08:30 WIB | Ekonomi-Bisnis

**Salah Satu Partai Pendu Pemerintah Tolak Tax Amnesty Jilid II**  
 22 Mei 2021 - 19:05 WIB | Ekonomi-Bisnis

**KORAN TEMPO**

## BABAK KEDUA PENGAMPUNAN PAJAK

**DIAJUKAN** pemerintah sejak 2016, rencana revisi kelima Undang-Undang Nomor 6 Tahun 1983 tentang Ketentuan Umum dan Tata Cara Perpajakan UU KUP memasuki tahapan baru. Pekan lalu, Menteri Koordinator Perencanaan Anggaran Hartarto mengungkapkan, Presiden Joko Widodo sudah mengirim surat kepada DPR untuk segera membahas RUU tersebut. Undang-undang itu menarik perhatian karena memuat pasal-pasal mengenai pengampunan pajak tax amnesty. Rencana pengampunan pajak jilid II memantik kritik lantaran jaraknya terlalu dekat dengan kebijakan serupa pada 2016. Selain itu, pengampunan pajak jilid I dinilai kurang sukses. Berikut ini beberapa pasal pengampunan pajak dalam draf revisi UU KUP:

- ✓ Pasal 37B**
  - Wajib pajak dapat mengungkapkan harta bersih yang belum atau kurang diungkapkan.
  - Harta bersih diperoleh sejak 1 Januari 1985 hingga 31 Desember 2015.
  - Tarif pajak penghasilan (PPH) final bagi harta tersebut sebesar:
    - 15 persen
    - 12,5 persen bagi wajib pajak yang menginvestasikan hartanya ke dalam surat berharga negara (SBN)
- ✓ Pasal 37D**
  - Investasi atas harta bersih harus:
    - ditempatkan ke dalam instrumen SBN paling lambat 31 Maret 2022
    - dilakukan paling singkat lima tahun
- ✓ Pasal 37E**
  - Wajib pajak orang pribadi dapat mengungkapkan harta yang:
    - diperoleh selama 1 Januari 2016-31 Desember 2019
    - masih dimiliki pada 31 Desember 2019
    - belum dilaporkan dalam surat pemberitahuan tahunan pajak penghasilan orang pribadi 2019
- ✓ Pasal 37C**
  - Surat pemberitahuan pengungkapan harta disampaikan kepada Direktorat Jenderal Pajak mulai 1 Juli hingga 31 Desember 2021.
  - Wajib pajak yang telah memperoleh surat keterangan pengungkapan harta dari Direktur Jenderal Pajak tidak akan dikenai sanksi administratif.
- ✓ Pasal 37F**
  - Harta yang dilaporkan dianggap sebagai tambahan penghasilan dan dikenai PPH final sebesar:
    - 30 persen
    - 20 persen, bagi wajib pajak orang pribadi yang menginvestasikan hartanya ke SBN

SUMBER: DRAFT REVISI RUU KUP (EPR R.) DESAIN: KUSWOYO

**m.merdeka.com**

Rencana ini nantinya akan tertuang dalam Revisi Undang-Undang Ketentuan Umum dan Tata Cara Perpajakan (RUU KUP) yang masuk Program Legislasi Nasional (Prolegnas) Prioritas 2021. Secara rinci, 5 kelompok wajib pajak yang dimaksud Sri Mulyani ialah sebagai berikut:

- Penghasilan sampai Rp 50 juta setahun dikenai PPh 5 persen
- Penghasilan di atas Rp 50 juta sampai Rp 250 juta setahun dikenai PPh 15 persen
- Penghasilan di atas Rp 250 juta sampai Rp 500 juta setahun dikenai PPh 25 persen
- Penghasilan di atas Rp 500 juta sampai Rp 5 miliar setahun dikenai PPh 30 persen
- Penghasilan di atas Rp 5 miliar setahun dikenai PPh 35 persen.



# HOT TOPICS




No tax regulations being issued yet!

	<b>IMPORTANT POINTS</b>
Elimination of sanction for those who joined Tax Amnesty 2016 program	<p>Object : net asset acquired 1 January 1985 up to 31 December 2015</p> <p>Income tax redemption rate:</p> <ul style="list-style-type: none"><li>❖ 15% or</li><li>❖ 12.5% if being invested in designated government bonds</li></ul> <p>Facility: elimination of sanction</p> <p>Program period : 1 July – 31 December 2021</p> <p>Investment on net asset at the latest by 31 March 2022 for a minimum of 5 years.</p>

# HOT TOPICS



## Existing Program

	IMPORTANT POINTS
<p>Elimination of sanction for those who joined/ did not join Tax Amnesty 2016 program</p> <p><b>Final Tax on Voluntary Asset Disclosure Program</b></p> 	<p>Object : asset acquired prior to 1 January 2016 but have not been reported during Tax Amnesty 2016 program or in the 2015 Annual Income Tax Return.</p> <p>Final Income tax redemption rate:</p> <ul style="list-style-type: none"><li>❖ 12.5% for certain taxpayer</li><li>❖ 25% for corporate tax payer</li><li>❖ 30% for individual tax payer</li></ul> <p>Facility: elimination of sanction</p> <p>Program period : November 2017 - now</p>

# HOT TOPICS



No tax regulations being issued yet!

	Discussions
Asset Disclosure Program for <b>INDIVIDUAL</b> taxpayers	<p>Object : assets obtained during 1 January 2016 up to 31 December 2019 which have not been reported in the Annual Individual Income Tax Return FY 2019</p> <p>Redemption rate:</p> <ul style="list-style-type: none"><li>❖ 30% or</li><li>❖ 20% if being invested in designated government bonds</li></ul> <p>Facility: elimination of sanction</p>

# HOT TOPICS



No tax regulations being issued yet!

	Discussions		
INDIVIDUAL Income tax rate	Income Bracket in million IDR	Current	DRAFT
	0 – 50	5%	5%
	> 50 - 250	15%	15%
	> 250 – 500	25%	25%
	> 500	30%	
	> 500 – 5,000		30%
	> 5,000		35%
Carbon tax	<i>New!</i>		
VAT	Current VAT Law : 5% - 15% Current applicable VAT rate : 10% <i>Next?</i>		



**MALAYSIA**

**SARAH CHEW**  

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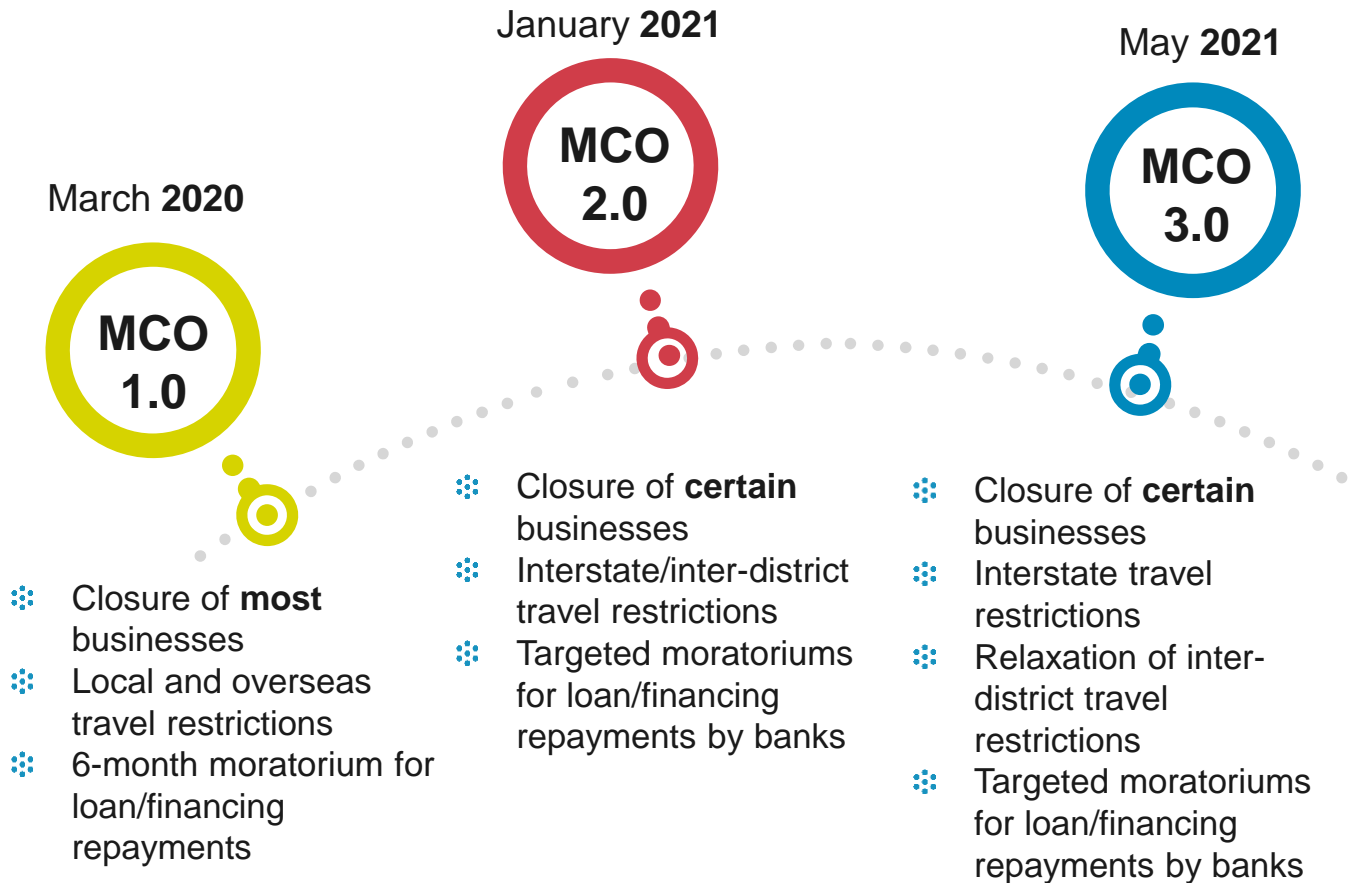
**TRICOR TAXAND SDN BHD**



# MALAYSIA



In 2020, the Movement Control Order (“MCO”) was introduced by the Malaysian Government as a measure to curb the spread of COVID-19, as follows:



# MALAYSIA – IMPACT OF COVID-19 ON BUSINESSES



## Financial impact:

- Cash flow issues
- Inability to service existing loans



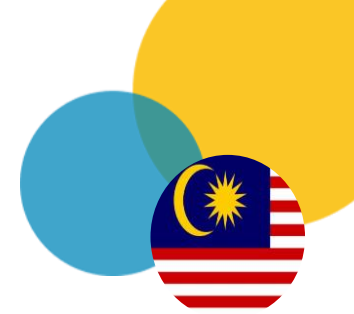
## Main industries impacted:

- Airline
- Retail
- Tourism
- Electrical and electronics
- Oil and gas
- Property

## Operational impact:

- Production and supply chain disruptions
- Cost overruns due to production delays
- Insufficient capacity
- Increased operating expenses
- Deferment of capital investments
- Retrenchment/reallocation of employees
- Increased reliance on technology tools/work-from-home arrangements

# MALAYSIA – AREAS OF TRANSFER PRICING CHALLENGE



## Intragroup services and other transactions

- ❖ Proof of services rendered and benefits received (during COVID-19 period)
- ❖ Arm's length remuneration for the transaction
- ❖ Availability of third-party service providers

## Losses/low margins

- ❖ Commercial/business reasons for the financial results
- ❖ Impact of extraordinary expenses and other factors contributing to losses
- ❖ Limited risk entities – should they share the losses incurred?



## Intragroup financial assistance

- ❖ Treatment of interest-free loans
- ❖ Application of interest rates for longer-term financial assistance

## Benchmarking

- ❖ Point of comparison
- ❖ Loss-making comparables – can they be accepted?
- ❖ Timing of study
- ❖ Term testing

## Preparation of contemporaneous TP documentation

- ❖ Impact of COVID-19
- ❖ Analysis of results by period (pre and post COVID-19)
- ❖ New RP transactions, changes in existing RP transactions/TP policy/FAR analysis etc.

# PHILIPPINES

**KRISTINE CARLOS**  

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**SALVADOR LLANILLO &  
BERNARDO**



# COVID-19 RESPONSE

## PHILIPPINE PROGRAM FOR RECOVERY WITH EQUITY AND SOLIDARITY (PH-PROGRESO)

	Emergency Stage	Recovery Stage	Resiliency Stage
Period	March to May 2020	June to December 2020	2021 onwards
Proposed or Issued Measures	<i>Bayanihan I</i>	<i>Bayanihan II</i> <b>Corporate Recovery and Tax Incentives for Enterprises Act (“CREATE”)</b>	2021 and 2022 General Appropriations Act and other reform laws
Key Features	<ul style="list-style-type: none"> <li>❖ Subsidy to poor and low-income households</li> <li>❖ Support for small businesses and key sectors</li> <li>❖ Health system, capacity, and insurance</li> <li>❖ Support to frontliners</li> </ul>	<ul style="list-style-type: none"> <li>❖ Raise income and create jobs</li> <li>❖ Resumption of Build, Build, Build Program priorities</li> <li>❖ Liquidity and equity infusion</li> <li>❖ Targeted tax incentives</li> </ul>	<ul style="list-style-type: none"> <li>❖ Structural reforms to prepare for the new normal, including enhancing resiliency to disasters and pandemics</li> <li>❖ Decongestion of major urban centers, balanced and resilient regional development)</li> </ul>

Source: NEDA, President’s Penultimate Report to the People 2016-2020





# OVERVIEW OF CREATE

**Tax Reform for Acceleration and Inclusion 2 (“TRAIN 2”)**

Filed in House of Representatives.

**Corporate Income Tax and Incentives Rationalization (“CITIRA”)**

Passed by House of Representatives

**CREATE**  
Signed by Bicam Committee

March  
2018

September  
2018

September  
2019

November  
2020

February  
2021

March  
2021

**Tax Reform for Attracting Better and Higher-quality Opportunities” Bill (“TRABAHO”)**

Approved by House of Representatives

**CREATE**  
Senate passed version

**CREATE**  
President signed Republic Act No. 11534 with veto



# OVERVIEW OF CREATE

## Corporate Recovery and Tax Incentives for Enterprises Act (“CREATE”)

### Objectives:

1. Improve the **equity and efficiency** of the corporate tax system;
2. Develop a more **responsive** and **globally-competitive tax incentives regime** that is performance-based, targeted, time-bound, and transparent;
3. Provide **support** to business in their **recovery**; and
4. Create a more **equitable tax incentives system**.

### Key Amendments:

1. **Adjustments of corporate income tax and other taxes**
2. **Rationalization of Fiscal Incentives**



# CORPORATE TAX ADJUSTMENTS

Entity	Old Rate	New Rate	Effectivity Date
1. Domestic Corporation	30%	25%	1 July 2020
		20% if total assets* do not exceed Php100 million (Usd2 million) and net taxable income is Php5 million (Usd100,000) and below	
- Proprietary Educational Institutions and Hospitals	10%	1%	1 July 2020 to 30 June 2023
2. Resident Foreign Corporation	30%	25%	1 July 2020
- Offshore Banking Units	10%	25%	1 July 2020
- Regional Operating Headquarters	10%	25%	1 January 2022
3. Non-resident Foreign Corporations	30%	25%	1 January 2021
4. Minimum Corporate Income Tax	2%	1%	1 July 2020 to 30 June 2023
5. Percentage Tax	3%	1%	1 July 2020 to 30 June 2023

\*Excluding the value of land on which the business entity's office, plant and equipment are situated.

# FOREIGN-SOURCED DIVIDEND EXEMPTION



## Conditions for exemption of foreign-sourced dividend

- ❖ The domestic corporation holds directly at least **20% of the outstanding shares** of the foreign corporation and has held the shareholdings for a **minimum of 2 years** at the time of dividend distribution;
- ❖ Funds are **reinvested** in the business operations of the domestic corporation in the Philippines
- ❖ Reinvested **within the next taxable year** from the time the dividends were received; and
- ❖ Reinvestment shall be limited to funding the **working capital** requirements, **capital expenditures**, **dividend** payments, investment in **domestic** subsidiaries and **infrastructure** projects.



# VAT EXEMPT TRANSACTIONS

- ❖ Sale or importation of **prescription drugs and medicines**
  - Diabetes, high cholesterol, and hypertension
  - Cancer, mental illness, tuberculosis, and kidney diseases
  
- ❖ Sale or importation of **capital equipment**, its spare parts and raw materials, necessary for the **production of PPE components** for COVID-19 prevention.
  
- ❖ Sale or importation of all **drugs, vaccines and medical devices** specifically prescribed and directly used for the treatment of COVID-19 and drugs for the treatment of COVID-19 approved by FDA for use in clinical trials, including raw materials directly necessary for the production of such drugs.
  
- ❖ Sale or importation of books and any newspaper, magazine, journal, review bulletin, or any educational reading materials in **digital or electronic format**.





# OTHER AMENDMENTS

- ❖ 10% Improperly Accumulated Earnings Tax (IAET) is repealed.
- ❖ Additional 50% deduction for apprenticeship training expenses.
- ❖ Capital gains tax (CGT) on sale of shares of stock not listed and traded in the stock exchange by resident and nonresident foreign corporations increased to 15%.
- ❖ Final withholding tax on interest income derived by resident foreign corporations from foreign currency deposits is increased to 15%.
- ❖ Types of reorganizations covered by tax-free exchanges under Section 40(C)(2), Tax Code.

# RATIONALISATION OF FISCAL INCENTIVES



## Power to approve/disapprove the grant of incentives

- ❖ Fiscal Incentives Review Board (FIRB) – Exceeding Php1 Billion (Usd20 Million) Investment
- ❖ Investment Promotion Agencies (IPA) - Not exceeding Php1 Billion (Usd20 Million) Investment



REGIONAL BOARD OF INVESTMENTS  
AUTONOMOUS REGION IN MUSLIM MINDANAO



# QUALIFICATIONS FOR INCENTIVES



- ❖ Engaged in a project or activity included in the Strategic Investment Priority Plan
- ❖ Meet the target performance metrics
- ❖ Install an adequate accounting system
- ❖ Comply with the e-receipting and e-sales requirements
- ❖ Submit annual reports of beneficial ownership and related parties



# SUMMARY OF INCENTIVES

## ❖ Income Tax Incentives

Type Registered Business Enterprise	Income Tax Incentive and Duration		
	Income Tax Holiday*	Special Corporate Income Tax <u>or</u> Enhanced Deductions	
		5% SCIT	ED
Export Enterprise	4 – 7 years	10 years	10 years
Domestic Enterprise	4 – 7 years	N/A	5 years

\*The ITH period will depend on the type of activities and location of the enterprise



# SUMMARY OF INCENTIVES

- ❖ VAT exemption on importation and VAT zero-rating on local purchases.
- ❖ Duty exemption on importation of capital equipment, raw materials, spare parts or accessories.
- ❖ Enhanced deductions
  - Additional 10% depreciation allowance for buildings
  - Additional 20% depreciation allowance for machineries and equipment
  - 150% Direct labor expense
  - 200% R&D costs
  - 200% Training expense
  - 150% Domestic inputs purchased
  - 150% Power Expense
  - 50% Reinvestment allowance to manufacturing industry
  - NOLCO – 5 years carry-over

# EXISTING REGISTERED ACTIVITIES



Current Incentives	Transitory Period
ITH only	Finish remaining ITH period
ITH and 5% GIT after ITH	5% GIT for 10 years
Currently availing 5% GIT	5% GIT for 10 years

# SPEAKERS



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