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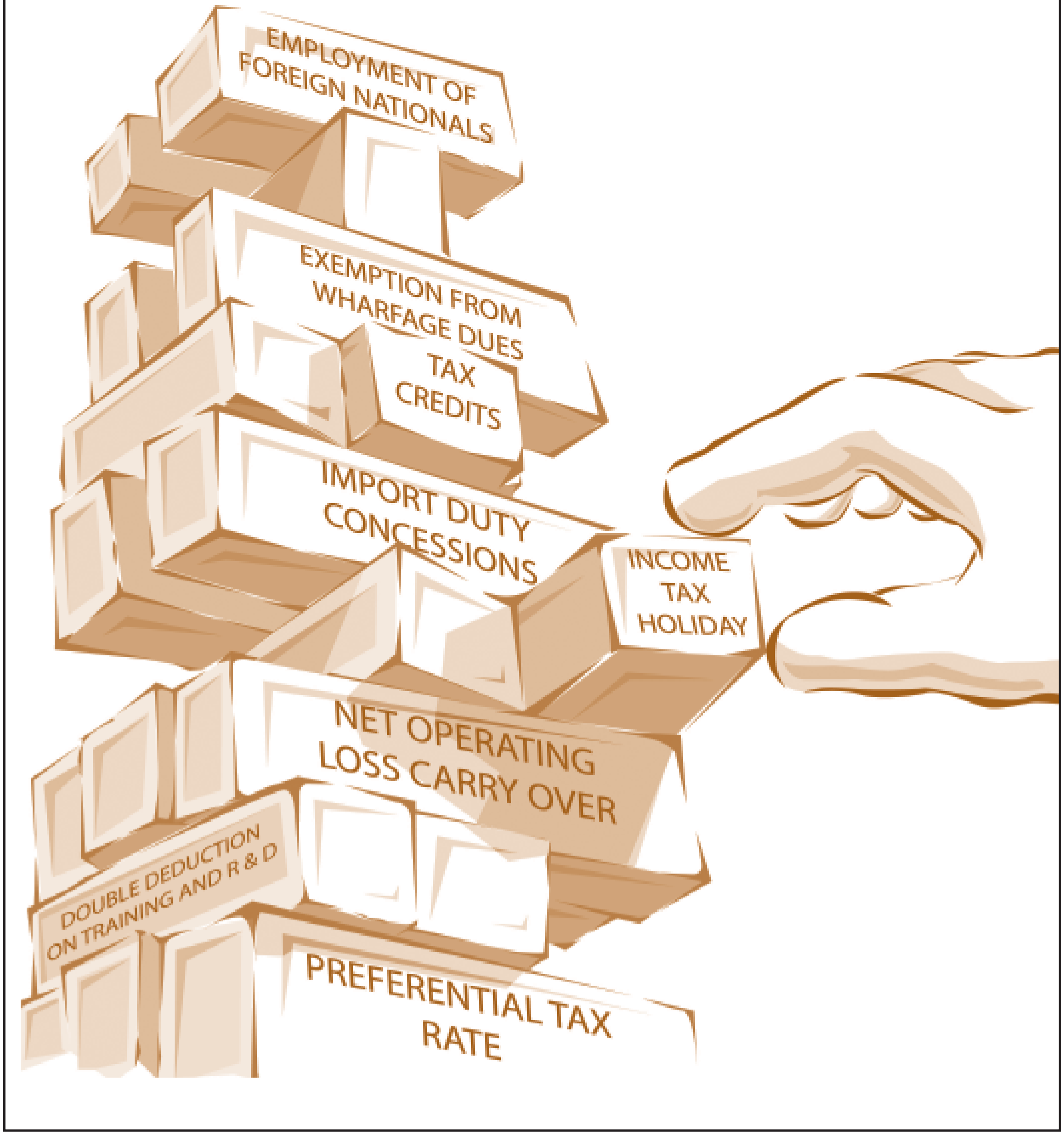
PHILIPPINE INVESTMENT INCENTIVE SCHEME - PART II

A Balancing Act


EMPLOYMENT OF FOREIGN NATIONALS
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PHILIPPINE INVESTMENT INCENTIVE SCHEME - PART II

A BALANCING ACT

"*In this world nothing can be said to be certain, except death and taxes,"* so goes a famous quote by Benjamin Franklin. But while the certainty of death is incontestable, taxes have proven its immunity from certainty time and again.

In the Philippines, numerous overlapping incentive-giving laws leave much room for tax abuse and bureaucratic red tape. The weak and loose system of administering incentives fails to effectively manage and monitor incentives extended by different investment promotion agencies (IPA) often resulting in double registration and "cherry-picking" by companies. This is just one of the reasons why many enterprises enjoy tax exemptions for an extended period, and why the government has been granting fiscal perks that are, in a real sense, foregone revenues.

In a series of studies conducted by the World Bank Group for the Philippine Government, income tax holiday (ITH), the centerpiece of the country's investment system, was identified as one of the sources for redundant incentives. It has been observed that majority of the enterprises granted with ITH are domestic market- and resource-seeking firms that are insensitive to incentives and will enter the market, survive, and prosper even without ITH.[1] Furthermore, investment perks are granted to business activities that are expected to produce positive spillovers and multiplier effects to society and the economy. However, the absence of check-and-balance, reporting, data management, and monitoring makes it difficult to verify if spillovers do occur and to what extent.

The World Bank Group suggests rationalizing the investment incentives scheme to include the introduction of a national investment promotion framework that designates specific mandates and functions of the main agencies, as well as establishing a system for transparency and equitable treatment to investors. It also suggests harmonizing the 124 laws governing investment incentives to make incentives time-bound and simple to administer, and with verifiable outcomes.

ON THE TABLE

Presently, there are five bills being deliberated in the 14th Congress. There is the House Bill 1757, the identical House Bills 2278 and 2712, the Trade Department-backed House Bill 2530, and the Recto Bill-inspired Senate Bill 1640. All of these proposed measures work towards harmonizing the incentives-granting laws, varying on the extent of generosity on tax exemptions and tax credits, as well as the suggested roles and functions of the investment promotion intermediaries.

S.B. 1640
An Act Ordaining a Consolidated Investments and Incentives Code of the Philippines

Closely resembling the Recto Bill is Senate Bill 1640, sponsored by Sen. Manny Villar. It proposes to discontinue using the Investment Priorities Plan (IPP) in determining economic activities that are eligible for incentives availment. The bill merges Board of Investments (BOI) and Philippine Economic Zone Authority (PEZA) into one agency to be called Philippine Investment Promotion Administration (PIPA). This agency shall have the combined functions of the BOI and PEZA, which are investment promotions and incentives administration and management.

In SB 1640, only registered firms exporting at least 70% of its total output, and registered enterprises operating in the 30 poorest provinces, may qualify to avail of incentives. The registered export enterprises may avail of reduced tax rate of either 15% of taxable income, or 5% from gross income earned. The Senate Bill also lobbies to provide net operating loss carryover, accelerated depreciation, VAT and duty free importation of raw materials, capital equipment, and source documents through VAT refund, exemption of wharfage dues.

Meanwhile, registered enterprises located in impoverished areas shall enjoy a preferential tax rate of 15% of taxable income, net operating loss carryover (NOLCO), and accelerate depreciation.

[1] A conclusion by Dr. Renato Reside, one of the researchers of the World Bank study on Fiscal Incentives.

H.B. 1757
The Consolidated Investments and Incentives Code of the Philippines

House Bill 1757 is the first version passed by Antique Representative Exequiel Javier on rationalizing the investment incentives scheme. It retains the IPP, but proposes to extend its validity period to three years from the current one year. Under this House Bill, registered activities listed in the IPP, enterprises exporting 50% or more of its output, and enterprises registered in IPAs are all qualified to avail of a uniformed set of incentives. These includes ITH from 4 to 8 years, tax credit on raw materials, tax and duty free importation of capital equipment, and tax and duty free importation of imported breeding stocks and genetic materials.

Registered and export enterprises may also enjoy NOLCO, accelerated depreciation, deferred imposition on the minimum corporate income tax, and exemption from wharfage dues. In addition to the above-mentioned entitlements, IPA-registered enterprises may enjoy a 5% tax rate on Gross Income Earned, in lieu of local and national taxes.

Performance-based incentives, such as investment tax allowance, double deduction on training expenses, and double deduction on research and development may only be granted upon the recommendation of the BOI, Department of Finance (DOF), and Department of Trade and Industry (DTI).

H.B. 2278 / H.B. 2712
Rationalizing the Grant and Administration of Fiscal and Non-fiscal Incentives, and for Other Purposes

There are two identical House bills filed separately by Representatives Javier and Thelma Almario (Davao Oriental). The twin bills, both supporting the DOF proposal on rationalizing and harmonizing investment incentives, seek to phase out income tax holiday in three years. It also proposes to scrap the Investment Priorities Plan, making incentives available only to exporting firms, expanding export firms, and domestic enterprises located in the 30 poorest provinces.

Under this version, the DOF shall be the primary agency in charge of formulating the tax and non-tax incentives policy in the country, while the BOI shall be the primary agency in charge of investment promotions. The registration of businesses and the administration of investment incentives shall be the primary task of the PEZA.

STRICTLY PERFORMANCE-BASED

The incentives provided under this bill are guided by the company's performance. The income tax holiday can be availed only by newly registered export enterprises for the three years following the effectivity of the Act. ITH shall be available in a decelerating manner until it is phased out after the third year. Once the ITH has been phased out, the registered export enterprise may choose to avail either the Reduced Income Tax Incentives (RITI) Package or the Gross Income Tax Incentive (GITI) Package. Previously-registered enterprises with any of the IPAs may avail of the RITI or GITI package as long as its incentives with the IPA has not yet lapsed. Otherwise, it may avail of the incentives only if it expands its operation.

The Reduced Income Tax Package includes a preferential 25% income tax rate, double deduction on tax for training and research and development, NOLCO, and accelerated depreciation. The GITI Package, on the other hand, does not offer these incentives but offers a fixed 5% tax rate of the gross income earned in lieu of all national and local taxes, except real property tax on land.

Registered domestic firms located in the 30 poorest provinces may avail of a 25% reduced income tax, double deduction for training and research and development, NOLCO, and accelerated depreciation.

Exemption from wharfage dues, employment of foreign nationals, and refund on value added tax (VAT) and customs duty for imported capital equipment and materials, with the use of a Trust Liability Account (TLA),[2] are universal perks for the qualified registered enterprises.

[2] *The Trust Liability Account (TLA) is a VAT refund scheme for exporters. The purpose of establishing this account is to ensure that sufficient funds are available to meet legitimate refund claims.*

COMPARING HB2278 / HB2712 AND HB 2530

Component Scope	HB 2712 Rep. Thelma Almario HB 2278 Rep. Exequiel Javier	HB 2530 Rep. Junie Cua
Investment Priorities Plan	Scrapped	▪ IPP shall be prepared in accordance with the Medium Term Philippine Development Plan (MTPDP) and the Medium Term Philippine Investment Plan (MTPIP). (Sec. 17) ▪ It shall be project-based for infrastructure projects and activity-based for manufacturing and services.
Qualified Applicants	▪ Export Enterprise - manufacturer, processor, or service provider whose sale of products or services is at least 70% of its output. (Sec. 3, Par. H) ▪ Domestic Enterprise - a registered enterprise whose export sales is less than 70% of its output and is located in the 30 poorest provinces. Provided, that such domestic enterprise has a minimum investment of P500 million or can provide a minimum employment of 200 jobs.	▪ Export Enterprise - manufacturer, processor that exports at least 50% of its output. An export trader that buys and sells for its own account products of micro and small enterprises and earns 100% of its annual sales from exports of the same shall be deemed to be an export enterprise. ▪ Registered Enterprise - an enterprise registered with IPAs and enterprises with activities listed in the IPP. ▪ Micro, Small and Medium Enterprises ▪ Enterprises located in the 30 poorest provinces
Fiscal Incentives		
Income Tax Holiday (ITH)	▪ For Export Enterprises: 3 years ITH, granted in a decelerating manner until it is phased out after 3 years. (Sec. 7, Par. J) ◆ 3-year ITH for export enterprises registering on the 1st year of the effectivity of the Act; ◆ 2-year ITH for export enterprises registering on the 2nd year of the effectivity of the Act; and ◆ 1-year ITH for export enterprises registering on the 3rd year of the effectivity of the Act. ▪ After the period of ITH, registered export enterprise may apply for either the **reduced income tax incentive package** or the **gross income-based incentives package** upon evaluation and approval by the concerned IPA. ▪ The reduced income tax incentive package includes: a preferential tax rate, double deduction for training, double deduction for research and development, NOLCO and accelerated depreciation. ▪ The gross income-based incentives package provides for a 5% tax of the gross income earned in lieu of all national and local taxes	▪ For Export Enterprises: ITH during the first eight years of operation. (Sec. 21, Par. A) ▪ For Registered Enterprises located in the 30 poorest provinces: ITH during the first eight years of operation. ▪ Micro, small and medium enterprises as defined by the appropriate agencies shall be entitled to eight years ITH regardless of operation

Investment Tax Allowance	- not in the proposed bill -	▪ For Registered Enterprises located in the 30 poorest provinces: After the ITH, domestic enterprises incurring capital expenditure shall be entitled to a 12 year investment tax allowance of 30% which can be utilized to offset against 100% of the taxable income. (Sec. 23, Par. B)
Preferential Tax Rate	▪ For Export Enterprises: 25% of taxable income, but shall apply only for the Reduced Income Tax Incentives Package (Sec. 7); or ▪ For Export Enterprises: 5% tax of the gross income earned in lieu of all national and local taxes but shall apply only for the Gross Income Tax Incentive Package ▪ For Domestic Enterprises: 25% of taxable income (Sec. 9)	▪ For Export Enterprises (located outside the zones or free ports): 15% of taxable income for a period of 12 years. (Sec. 21, Par. B) ▪ For Export Enterprises (located in the Special Economic Zones, Free Trade and Free Port Zones): 5% on gross income earned (Sec. 22, Par. A) ▪ For Registered Enterprises located in the 30 poorest provinces: 15% of taxable income for a period of 20 years from the start of commercial operation, in lieu of ITH and ITA. (Sec. 23, Par. C)
Capital Equipment and Raw Materials Incentives	▪ Export enterprises registered with IPAs and located inside the ecozones or free ports are exempted from VAT and customs duty imposed on their imported capital equipment and raw materials. (Sec. 8) ▪ Those under PEZA and located outside the ecozones or freeports are subject to VAT and Customs Duty Refund. All VAT and customs duty payment shall be deposited in a Trust Liability Account (TLA).	▪ For Registered Enterprises: 1) importation of capital equipment shall be exempted to the extent of 100% of the taxes and customs duties; and 2) the purchase of machinery and capital equipment and raw materials shall be subject to zero percent VAT. (Sec. 20, Par. B) ▪ For Export Enterprises (located outside zones or freeports): tax credit equivalent to internal revenue taxes and customs duties paid on the supplies, materials and products used.
Exemption from VAT on Local Purchases of Goods and Services	- not in the proposed bill -	▪ For Export Enterprises: local purchases of goods and services required by the activity of a registered export enterprise shall be exempt from VAT. (Sec. 21, Par. G)
Net Operating Loss Carry Over (NOLCO)	▪ Loss in the first 5 years carried over for the next 5 consecutive taxable years (Sec. 9)§ For Export Enterprises: Shall apply for the Reduced Income Tax Incentives Package ▪ Applies to registered domestic enterprise ▪ For Export Enterprises: Shall apply for the Reduced Income Tax Incentives Package (Sec. 9) ▪ Applies to registered domestic enterprise	▪ For Registered Enterprises: Loss in the first 5 years carried over for the next 10 consecutive taxable years. This does not apply to those availing the ITH. (Sec. 20, Par. A)
Accelerated Depreciation	▪ For Export Enterprises Shall apply for the Reduced Income Tax Incentives Package (Sec. 9) ▪ Applies to registered domestic enterprise	▪ For Registered Enterprises: Computation for depreciation shall be a rate not exceeding twice the rate that would have been used had the annual allowance been computed. (Sec. 20, Par. C)

Double Deduction for Training	▪ For Export Enterprises: Shall apply for the Reduced Income Tax Incentives Package (Sec. 9) ▪ Applies to registered domestic enterprise	▪ Applies to Registered Enterprises. (Sec. 20, Par. D)
Double Deduction for R&D	▪ For Export Enterprises: Shall apply for the Reduced Income Tax Incentives Package (Sec. 9) ▪ Applies to registered domestic enterprise	▪ Applies to Registered Enterprises. (Sec. 20, Par. E)
Incentives for Necessary and Major Infrastructure and Public Facilities	- not in the proposed bill -	▪ For Registered Enterprises: 100% tax deductible. (Sec. 20, Par. F) ▪ Any amount not deducted for a particular year may be carried over for deduction for subsequent years not exceeding ten years from commercial operation
Exemption from Wharfage dues	▪ Applies to exports by registered export enterprise/s (Sec 7, Par. D)	▪ For Export Enterprises: exempted from wharfage dues and export taxes (Sec. 21, Par. F)
Non-Fiscal Incentives		
Employment of Foreign Nationals	▪ For Export Enterprises: Foreign nationals including their spouses and unmarried children under 21 years of age shall be permitted to enter and reside in the Philippines during the period of employment of such foreign nationals. (Sec. 7, E) ▪ A registered export enterprise may employ foreign nationals in supervisory, technical or advisory positions for a period not exceeding five years from registration, extendible for limited periods. Provided, that when the majority of the capital stock is owned by foreign investors, the positions of the president, treasurer and general manager of their equivalent may be retained by foreign nationals beyond the period set forth. ▪ Entitlement of Investor's Visa	▪ For Registered Enterprises: Foreign nationals including their spouses and unmarried children under 21 years of age shall be permitted to enter and reside in the Philippines during the period of employment of such foreign nationals. They shall be issued a multiple entry visa valid for five years. (Sec. 25, Par. A) ▪ Entitlement of Investor's Visa
Time-Bound Processing of Requirements	- not in the proposed bill -	▪ For Registered Enterprises: All applications for permits, licenses, authorization and other requirements shall be acted upon by the government agency concerned within ten working days from official acceptance, otherwise it shall be considered automatically approved. (Sec. 25, Par. B)
Simplification of Customs and Internal Revenue Procedures	- not in the proposed bill -	▪ For Registered Enterprises: Procedures for importation shall be simplified by the Bureau of Customs. (Sec. 25, Par. C) ▪ Internal revenue procedures for the availment of incentives shall be simplified by the Bureau of Internal Revenue (Sec. 25, Par. C)

H.B. 2530
The Investments and Incentives Code of the Philippines

House Bill 2530, authored by Quirino Representative Junie Evangelista Cua, is an expanded version of the BOI proposal. It seeks to formulate industry and sectoral development programs with the creation of an Industrial Development Board (IDB). In the proposed measure, the IDB shall be an attached agency of the DTI involved in the formulation of a National Framework for Industrial Development (NFID) and in the preparation of the IPP. The BOI, on the other hand, shall focus on promoting investments by establishing and operating regional and overseas investment offices, and an Investment Promotion Action Center. As its guideline, the BOI is tasked to formulate a National Framework for Investment Promotions (NFIP).

The Bill offers a wide assortment of incentives for business enterprises of different kinds. The lengthy list provides incentives to IPA-registered enterprises, export enterprises, micro, small and medium enterprises (MSMEs), and to enterprises located in the 30 poorest provinces. Under this Bill, enterprises registered with any of the IPAs can avail of NOLCO, accelerated depreciation, double deduction on training and research and development, and tax and duty free on imported capital equipment for 5 years.

Meanwhile, those located in the 30 poorest provinces shall enjoy ITH of up to 8 years, a 30% income tax allowance for 12 years, and a 15% preferential income tax for 20 years.

Export enterprises, regardless of location, may avail of ITH in the first 8 years of operation. They shall also enjoy duty free importation of source documents,[3] preferential tax rates, tax credit on raw materials, exemption from wharfage dues, and exemption from VAT on local purchases. In addition to these, enterprises in freeports and zones shall be exempted from paying local taxes and licenses, and shall be granted tax treatment for both local and foreign merchandise and services.

Unique to HB 2530 is the special incentives package for MSMEs. It proposes to extend ITH to MSMEs for 8 years, and provides tax treatments for local and foreign merchandise and services. It also exempts micro entrepreneurs from paying local taxes and licenses.

ON THE SAME PAGE

Each of the proposed measures has a different approach to rationalizing the incentives scheme, but they all share some common features. One similarity is that they all seek to harmonize the incentives scheme by repealing some incentive-giving laws and provisions of laws, such as Executive Order No. 226, otherwise known as “The Omnibus Investment Code of 1987,” and Republic Act No. 7916, otherwise known as the “Special Economic Zone Act of 1995.”

All the bills are also generous in granting incentives to export enterprises and enterprises in the 30 poorest provinces, although some bills have a wider scope of eligibility.

The proposed reforms also seek to create a more transparent and efficient system in administering, reporting, and monitoring incentives through institutional change. Lastly, proposed pieces of legislation incorporate more performance-based incentives in the menu. These include longer NOLCO, accelerated depreciation, double deduction for training and research and development, and import duty concessions.

POLICY RECOMMENDATIONS

There are two goals that need to be achieved in reforming the fiscal incentives scheme. First, the new incentives package should effectively increase the capacity of the government to generate revenue from corporate taxes. Second, it has to stimulate new investments and encourage business expansion. But these goals seem to be in conflict with each other.

[3] *“Source documents” are input materials and documents reasonably needed by IT and IT-enabled industries such as, but not limited to, books, directories, magazines, newspapers, brochures, pamphlets, medical records/files, legal records/files, instruction materials, and drawings/blueprints/outlines.*

The DOF report reveals that the Philippine government grants an average of P209 billion yearly on tax and duty exemptions.[4] Majority of these are redundant perks that translate into foregone revenues for the government. In order to address the issue of high redundancy rate, the 2007 World Bank suggests assessing the ITH, with the possible replacement of such incentive with a combination of performance-based incentives.
Meanwhile, the BOI is reluctant to take ITH off the menu, either immediately or gradually, arguing that the Philippines needs to give generous incentives in order to be competitive and attractive to foreign investors. It points out that other Asian countries offer generous incentives, including ITH, and these countries outperform us in competitiveness areas such as infrastructure, education, quality of human skills, political soundness, peace and order, and cost of doing business, among others.[5]

In 2006, the Philippines attracted US$2,345 million worth of foreign direct investments (FDI). Although investments have been on an increasing trend these past years, FDI in the Philippines remains the lowest among the ASEAN countries. Last year's figure is only 4.48% of the total FDI pie in the region. With the Philippines trailing behind its neighbors in these factors, groups favoring to retain ITH contend that the country cannot afford to reduce the benefits that are currently offered to investors. But it cannot be ignored that the core issue of addressing competitiveness, under factors that matter, is left unresolved.

TWO-WAY COMMITMENT

Given that the Philippines lacks the decent infrastructure and resources that other countries have, it would be more reasonable if the government takes action on improving its shortcomings rather than focusing on providing "compensating" incentives.

An important prerequisite in improving the country's business climate is the flawless implementation of sound fiscal laws to reduce tax abuse cases. Such reduction would help improve the collection of revenues by the government, which may then be utilized to improve public goods and services. Of course, it is assumed that the revenues collected from the reformed incentives laws will truly be utilized for the overall development of the people, and not to be diverted to the pockets of a few.

House Bill 2712[6] limits the granting of ITH to exporting enterprises for only three years from the effectivity of the Act. After which, any revenue gains and savings earned from rationalizing the fiscal incentives shall be poured to modernizing infrastructure (50%), and improving the quality of education (50%). This arrangement reflects a compromise between the government and the business sector. The latter works towards being self-sufficient and profitable without the support of a tax holiday, while the former commits to, and provides, tangible results, such as better roads, modernized air and seaports, and highly trained and skilled workers.

To measure the effective delivery of public goods and services, specific and clear target milestones should be set. The stakeholders may adopt one option, or a combination of options, in measuring and verifying the milestones/deliverables of the government.

One option is to use other Asian countries as benchmarks in determining whether the Philippines is gaining ground in terms of competitiveness. The 2006 World Development Indicators of the World Bank reports that of the 200,037 kilometers total Philippine road network, only 9.9% are paved. Thailand, on the other hand, has built better quality roads with 98.5% of its total road network paved (See Table 1). Using this as a comparative measure, the Philippine government may set an annual goal of increasing the percentage of paved roads against the total number of roads.

Another option is to simply require the government to increase the ratio of infrastructure spending to gross domestic product (GDP) to a decent 5%, the benchmark for developing countries. The Philippines has not been investing as much as it should in infrastructure, this is evident by the low infrastructure-to-GDP ratio

[4] The yearly average of P209 billion for tax and duty exemptions is the average from year 2000 to 2005.
[5] BOI's support for ITH, and the stated reason, has been raised several times, first during 3 August 2007 National Competitiveness Council meeting, followed by the agency's presentation during the MBC NIC Meeting on 13 September 2007. This is also evident by in the BOI proposal, "Framework on the Incentives Bill" drafted 1 August 2007.
[6] This Report uses the latest version filed, HB 2712, in referring to the twin bills "Rationalizing the Grant and Administration of Fiscal and Non-fiscal Incentives, and for Other Purposes."

Table 1

QUALITY OVER QUANTITY

Road Statistics of Selected Asian Countries

	Total Road Network in Kilometer 1993-2003	Paved Roads (%)
China	1,809,829	79.5
Indonesia	368,360	58
India	3,851,440	62.6
Malaysia	71,814	77.9
Philippines	200,037	9.9
Singapore	3,165	100
Thailand	57,403	98.5

Sources: 2006 World Development Indicators, World Bank

for the past years. In 2006, infrastructure spending was only 2.2% of total GDP (See Figure 1).

The third option is to tie the incentives reform to the Philippine Medium Term Public Investment Plan. The infrastructure and education projects listed in the Plan may be constantly monitored for status and updates, and the attainment of these can serve as basis for establishing credibility milestones by the government. Examples of prioritized infrastructure projects are the following: opening of the Ninoy Aquino International Terminal 3, constructing the MRT/LRT loop, establishing the Strong Republic Nautical Highway, and building the Subic-Clark-Tarlac corridor. The government can also work on reducing the cost of shipping, cost of utilities, and the number of transaction days in business application to improve the country's competitiveness as an investment location.

TYPES OF INCENTIVES

The World Bank study concluded that the Philippine government, for years, has not been successful at "picking winners." It is not surprising that it has reached this conclusion given that the government, through the IPP, has basically identified all industries as priorities. In fact, these industries have been in the IPP list for years, yet they fail to produce evident positive spillovers to society.[7]

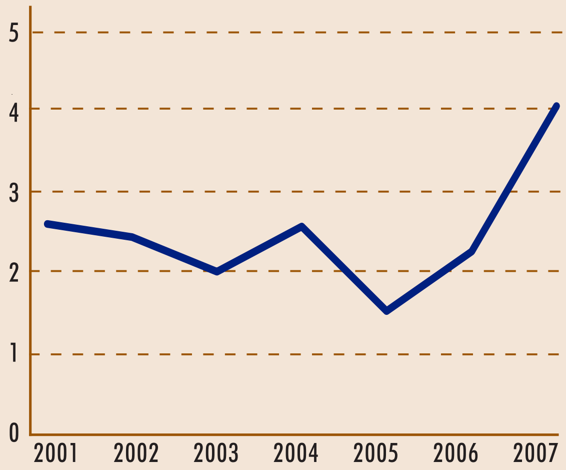
Among the bills filed, the revisions proposed in HB 2712 and HB2278 are the closest to addressing the problems related to incentives granting. It discourages the listing of priority industries in the IPP for the purpose of determining who may avail of incentives. Instead, the bill limits the qualified enterprises to the following: newly registered enterprises exporting at least 70% of its output, previously registered enterprises expanding its operations, and registered domestic enterprises located in the 30 poorest provinces with a minimum investment of P500 million or can provide a minimum employment of 200 jobs.

But even to these firms, incentives are bound by time and performance. The newly registered export enterprises may avail of tax holidays under a three-year window and in a decelerating manner from the effectivity of the Act. This means that if the Act is passed in 2008, and Company X is registered in 2009, then the company can only avail of two years of ITH. The bill may be revised to include the eligibility of newly registered enterprises in the 30 poorest provinces in availing tax holidays.

Figure 1

WEAK SUPPORT

Infrastructure Investment to GDP Ratio



Source: World Bank

[7] DOF estimated that the government revenue per P1.00 of ITH is P0.13, from 1995 to 2004.

In HB 2278, exporting firms previously registered in IPAs are not eligible for ITH. However, if it expands it may avail of one of the two incentives packages, the RITI package and the GITI package, which the newly registered export firms are also entitled to have after their ITH has expired.

Performance-based incentives applicable under the RITI package are time-bound. The double deduction for training and research and development may be applied on the year that expenses on the said activities were incurred, while net operating loss for the first five years may be carried over as deduction from gross income for the next five years following year of loss. Providing sunset clauses, or limiting the period of utilizing the incentives, would be ideal in order to promote transparency and provide for proper regulation of incentives.

Another important provision that should be included in the bill is the honoring of time-bound incentives previously granted to enterprises that have not yet lapsed in time. It would also be ideal if the corporate income tax rate were lowered from 35% to a rate that is less than or equal to 30%.

INSTITUTIONAL ARRANGEMENT

Any reform on rules and laws must be accompanied by a strong administrative system in order to be effective. In the case of fiscal incentives, loopholes in the bureaucracy and the complex operations of regulatory agencies were identified as sources of tax abuse and investors' confusion. As such, it is a good idea to use the World Bank's detailed assessment of the current institutional arrangement in realigning the responsibilities and functions of the different regulatory agencies and IPAs.

The proposal of the Villar Bill (SB 1640) to merge the BOI and PEZA into one single regulatory agency involved major reconstructing with no assurance of good results. The Cua Bill, on the other hand, seeks to create a new body called the Investment Development Board, which shall be responsible for sectoral and industrial development programs on economic developments including international trade relations. But similar to the BOI, the IDB shall be an attached agency of the DTI.

There are several concerns surrounding this proposal. First, the proposed function of the IDB is not only redundant to the main function of DTI, it also overlaps with the function of the National Economic Development Authority (NEDA), the government agency "responsible for coordinating the formulation of continuing and integrated socioeconomic development plans, policies and programs, including the formulation of anual and medium-term public investment programs."[8]

Secondly, from the long list of powers and functions of the IDB, it can easily be assumed that the IDB was designed to be a large national agency. The government does not have the budget to create and support another major agency – with barely enough funds to allocate for poverty alleviation, infrastructure development, or military support.

Rather than creating a new agency, the government may establish a clear and coherent framework for the existing agencies and IPAs. It should work on simplifying the procedures, delineating functions and responsibilities, and establishing a system for coordination, reporting, and monitoring. It would also be wiser to take advantage of the proven efficiency and effectiveness of PEZA and zone administrators in managing and administering incentives.

Of the five bills filed, the proposed institutional reform in HB 2278 is the best and most practical option. It puts BOI in charge of all investment promotion activities, and reconstitutes PEZA to be responsible for incentives administration and supervision. The PEZA, as the implementing agency, shall be mandated to regularly report to the BOI, DOF, and Bureau of the Treasury for data management, monitoring, and transparency. The DOF, meanwhile, shall be the primary agency in charge of formulating tax and non-tax incentive policies.

[8] *The NEDA functions are stated in the NEDA website: www.neda.gov.ph*

NON-FISCAL INCENTIVES

Some sections in the Cua Bill (HB 2530) provide good suggestions for non-fiscal reforms. One of the universal incentives offered to registered enterprises is the right to employ foreign nationals to take managerial, supervisory, and technical positions, provided that the company train Filipinos to acquire the skills required for those positions. This would grant the companies the flexibility of hiring qualified personnel for the top positions from other countries if there is no one in the local labor force that meets the qualifications. But it does not ignore the issue of insufficient skills as it drives the company to work on improving the skills and competitiveness of its Filipino workers through training and hands-on learning as understudies.

Another provision in the Cua Bill that should be included in the reformed Act is the setting of a timeframe for business applications. Section 25 of the Universal Non-Fiscal Incentives suggests that application for permits, licenses, authorization, and other requirements necessary for doing business shall be acted upon, by the government agency concerned, within ten working days. Furthermore, it mandates the Bureau of Customs and Bureau of Internal Revenue to simplify their respective procedures.

The World Bank Group suggests more actions to further simplify and harmonize the overall system in managing and providing investment incentives. These are the following:
- Develop a clear methodology of coordination and reporting between main agencies and IPAs;
- Track and report revenue effects of incentives;
- Report allocations of the revenues and savings from the reduction of incentives; and
- Regularly report tax expenditures to Congress

CONCLUSION

Rationalizing fiscal incentives has been on the agenda of the Philippine Congress since 1997, and yet it is nowhere near its conclusion. Conflicting positions and opposing reports of the DTI-BOI and the DOF, as well as the varied preferences of different industries, have impeded the progress of harmonizing the incentives laws and system in the country. While open discussions lead to a much sounder and effective reform, stakeholders should refrain from dwelling too much on current situations of foregone revenues, lack of infrastructure, and the wants and needs of both the government and the private sector. Specific measures must be identified to address this and such actions must be reflected in the reformed Act.

Much of the good points raised in this report are from the identical bills, HB 2712 and HB 2278, particularly in the areas of institutional reforms and incentives rationalization. Meanwhile, the provisions on non-fiscal incentives under HB 2530 by Rep. Cua are highlighted for their detailed proposal on reducing the requirements and timeframe for business registration.

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