

REPUBLIC ACT NO. 7918

AN ACT AMENDING ARTICLE 39, TITLE III OF EXECUTIVE ORDER NO. 226, OTHERWISE KNOWN AS THE OMNIBUS INVESTMENTS CODE OF 1987, AS AMENDED, AND FOR OTHER PURPOSES

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

SECTION 1. Article 39, Title III of Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, as amended, is hereby further amended to read as follows:

"ART. 39. *Incentives to Registered Enterprises.* – All registered enterprises shall be granted the following incentives to the extent engaged in a preferred area of investment:

"(a) *Income Tax Holiday.* -

"(1) For six (6) years from commercial operation for pioneer firms and four (4) years for non-pioneer firms, new registered firms shall be fully exempt from income taxes levied by the national government. Subject to such guidelines as may be prescribed by the Board, the income tax exemption will be extended for another year in each of the following cases:

"(i) The project meets the prescribed ratio of capital equipment to number of workers set by the Board;

"(ii) Utilization of indigenous raw materials at rates set by the Board;

"(iii) The net foreign exchange savings or earnings amount to at least US\$500,000 annually during the first three (3) years of operation.

"The preceding paragraph notwithstanding, no registered pioneer firm may avail of this incentive for a period exceeding eight (8) years.

"(2) For a period of three (3) years from commercial operation, registered expanding firms shall be entitled to an exemption from income taxes levied by the national government proportionate to their expansion under such terms and conditions as the Board may determine: *Provided, however,* That during the period within which this incentive is availed of by the expanding firm it shall not be entitled to additional deduction for incremental labor expense.

"(3) The provision of Article 7(14) notwithstanding, registered firms shall not be entitled to any extension of this incentive.

"(b) *Additional Deduction for Labor Expense.* - For the first five (5) years from registration a registered enterprise shall be allowed an additional deduction from the taxable income of fifty percent (50%) of the wages corresponding to the increment in the number of direct labor for skilled and unskilled workers if the project meets the prescribed ratio of capital equipment to number of workers set by the Board: *Provided,* That this additional deduction shall be doubled if the activity is located in less developed areas as defined in Article 40.

"(c) *Tax and Duty Exemption on Imported Capital Equipment and its Accompanying Spare Parts.* - New, expanding/modernizing enterprises which have been registered with the Board of Investments on or before December 31, 1994 shall be exempt to the extent of one hundred percent (100%) of national internal revenue taxes and customs duties on importations of machinery, equipment and accompanying spare parts within the prescribed period under its law of registration or until December 31, 1997 whichever comes first: *Provided, however,* That those enterprises located outside the National Capital Region (NCR) and registered on or before December 31, 1994 may avail of the incentives herein provided until December 31, 1999: *Provided, further,* That the enterprise which shall register after December 31, 1994 shall be subject to the provisions of Republic Act No.

7716, and three percent (3%) customs duties up to December 31, 1997: *Provided, finally*, That the importation of machinery, equipment and accompanying spare parts shall comply with the following conditions:

"(1) They are not manufactured domestically in sufficient quantity, or comparable quality, and at reasonable prices;

"(2) They are reasonably needed and will be used exclusively by the registered enterprise in its registered activity, unless prior approval of the Board is secured for the part-time utilization of said equipment in a non-registered activity to maximize usage thereof or the proportionate taxes and duties are paid on specific equipment and machinery being permanently used for non-registered activities; and

"(3) The approval of the Board was obtained by the registered enterprise for the importation of such machinery, equipment and accompanying spare parts.

"In granting the approval of the importations under this paragraph, the Board may require international canvassing but if the total cost of the capital equipment or industrial plant exceeds US\$5,000,000, the Board shall apply or adopt the provisions of Presidential Decree No. 1764 on international competitive bidding.

"If the registered enterprise sells, transfers or disposes of these machinery, equipment and spare parts without prior approval of the Board within five (5) years from date of acquisition, the registered enterprise and the vendee, transferee, or assignee shall be solidarily liable to pay twice the amount of the tax exemptions given it. The Board shall allow and approve the sale, transfer or disposition of the said items until December 31, 1997 or December 31, 1999 as the case may be if made:

"(aa) To another registered enterprise or registered domestic producer enjoying similar activities;

"(bb) For reasons of proven technical obsolescence; or

"(cc) For purpose of replacement to improve and/or expand the operations of the registered enterprise.

"(d) *Tax Credit on Domestic Capital Equipment.* - A tax credit equivalent to one hundred percent (100%) of the value of the national internal revenue taxes and customs duties that would have been waived on the machinery, equipment and spare parts, had these items been imported shall be given to the new and expanding enterprise registered with the Board of Investments as of December 31, 1994 which purchases machinery, equipment and spare parts from a domestic manufacturer: *Provided*, (1) That the said equipment, machinery and spare parts are reasonably needed and will be used exclusively by the registered enterprise in its registered activity, unless prior approval of the Board is secured for the part-time utilization of said equipment in a non-registered activity to maximize usage thereof; (2) That the equipment would have qualified for tax and duty exemption under paragraph (c) hereof; (3) That the approval of the Board was obtained by the registered enterprise; and (4) That the purchase is made on or before December 31, 1997 or December 31, 1999 as the case may be. If the registered enterprise sells, transfers, or disposes of these machinery, equipment and spare parts, the provision in the preceding paragraph for such disposition shall apply.

"(e) *Simplification of Customs Procedures.* - Customs procedures for the importation of equipment, spare parts, raw materials and supplies, and exports of processed products by registered enterprises shall be simplified by the Bureau of Customs.

"(f) *Unrestricted Use of Consigned Equipment.* - Provisions of existing laws notwithstanding, machinery, equipment and spare parts consigned to any registered enterprise shall not be subject to restrictions as to period of use of such machinery, equipment and spare parts: *Provided*, That the appropriate re-export bond is posted unless importation is otherwise covered under subsections (c) and (l) of this article: *Provided, further*, That such consigned equipment shall be for the exclusive use of the registered enterprise.

"If such equipment is sold, transferred or otherwise, Article 39(c)(3) shall apply. Outward remittance of foreign exchange covering the proceeds of such sale, transfer or disposition shall be allowed only upon prior Bangko Sentral ng Pilipinas approval.

"(g) *Employment of Foreign Nationals.* - Subject to the provisions of Section 29 of Commonwealth Act No. 613, as amended, a registered enterprise may employ foreign nationals in supervisory, technical or advisory positions for a period not exceeding five (5) years from its registration, extendible for limited periods at the discretion of the Board: *Provided, however,* That when the majority of the capital stock of a registered enterprise is owned by foreign investors, the positions of president, treasurer, and general manager or their equivalents may be retained by foreign nationals beyond the period set forth within.

"Foreign nationals under employment contract within the purview of this incentive, their spouses and unmarried children under twenty-one (21) years of age, who are not excluded by Section 29 of Commonwealth Act No. 613, as amended, shall be permitted to enter and reside in the Philippines during the period of employment of such foreign nationals.

"A registered enterprise shall train Filipinos as understudies of foreign nationals in administrative, supervisory and technical skills and shall submit annual reports on such training to the Board.

"(h) *Exemption on Breeding Stocks and Genetic Materials.* - The importation of breeding stocks and genetic materials within ten (10) years from the date of registration of commercial operation of the enterprise shall be exempt from all taxes and duties: *Provided,* That such breeding stocks and genetic materials are: (1) not locally available and/or obtainable locally in comparable quality and at reasonable prices; (2) reasonably needed in the registered activity; and (3) approved by the Board.

"(i) *Tax Credit on Duty Portion of Domestic Breeding Stocks and Genetic Materials.* - A tax credit equivalent to one hundred percent (100%) of the value of national internal revenue taxes and customs duties that would have been waived on the

breeding stocks and genetic materials had these items been imported shall be given to the registered enterprise which purchases breeding stocks and genetic materials from a domestic producer: *Provided*, (1) That said breeding stocks and genetic materials would have qualified for tax and duty-free importation under the preceding paragraph; (2) That the breeding stocks and genetic materials are reasonably needed in the registered activity; (3) That approval of the Board has been obtained by the registered enterprise; and (4) That the purchase is made within ten (10) years from the date of registration of commercial operation of the registered enterprise.

"(j) *Tax Credit for Taxes and Duties on Raw Materials.* - Every registered enterprise shall enjoy a tax credit equivalent to the national internal revenue taxes and customs duties paid on the supplies, raw materials and semi-manufactured products used in the manufacture, processing or production of its export products and forming part thereof; exported directly or indirectly by the registered enterprise: *Provided, however*, That the taxes on the supplies, raw materials and semi-manufactured products domestically purchased are indicated as a separate item in the sales invoice.

"Nothing herein shall be construed as to preclude the Board from setting a fixed percentage of exports sales as the approximate tax credit for taxes and duties of raw materials based on an average or standard usage for such materials in the industry.

"(k) *Access to Bonded Manufacturing / Trading System.* - Registered export-oriented enterprises shall have access to the utilization of the bonded warehousing system in all areas required by the project subject to such guidelines as may be issued by the Board upon prior consultation with the Bureau of Customs.

"(l) *Exemption from Taxes and Duties on Imported Spare Parts.* - Importation of required supplies and spare parts for consigned equipment or those imported tax and duty-free by a registered enterprise with a bonded manufacturing warehouse shall be exempt from customs duties and national internal revenue taxes payable thereon: *Provided, however*, That at least seventy percent (70%) of production is exported: *Provided, further*, That

such spare parts and supplies are not locally available at reasonable prices, sufficient quantity and comparable quality: *Provided, finally,* That all such spare parts and supplies shall be used only in the bonded manufacturing warehouse of the registered enterprise under such requirements as the Bureau of Customs may impose.

"(m) *Exemption from Wharfage Dues and Export Tax, Duty, Impost and Fee.* - The provision of law to the contrary notwithstanding, exports by a registered enterprise of its non-traditional export products shall be exempted from any wharfage dues, and any export tax, duty, impost and fee."

SEC. 2. All other provisions of Executive Order No. 226 and Republic Act No. 7369, also known as "An Act Granting Tax and Duty Exemption and Tax Credit on Capital Equipment," not otherwise affected by the provisions of this Act shall remain in full force and effect.

SEC. 3. All other laws, decrees, orders, issuances and rules and regulations or parts thereof inconsistent with this Act, are hereby repealed or modified accordingly.

SEC. 4. *Effectivity Clause.* - This Act shall have retroactive effect to May 5, 1994 fifteen (15) days following its publication in a newspaper of general circulation.

Approved, February 24, 1995.