

**Republic of the Philippines**  
**BOARD OF INVESTMENTS**

**Rules and Regulations**  
**In the Availment of Income Tax Holiday Extension**

The following Rules and Regulations are hereby promulgated to govern the availment of Income Tax Holiday Bonus Year Under Article 39(a)(1) of E.O. 226 as amended by R.A. 7918:

**Rule I**  
**General Principles**

**Section 1. Legal Bases.** Article 39(a)(1) of E.O. 226 as amended by R.A. 7918 provides the extension of the income tax holiday (ITH) incentive 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\$500,000.00 annually during the first three (3) years of operation

*Provided*, no registered pioneer firm may avail of the ITH incentive for a period exceeding eight (8) years.

**Rule II**  
**Definition of Terms**

**Section 1. Definitions.** As used in these rules and regulations, the following shall be construed to mean:

- a. **Registered Enterprise** shall mean any individual, partnership, cooperative, corporation or other entity incorporated and/or organized and existing under Philippine laws and registered with the Board in accordance with Book I of E.O. 226; Provided, however, That the term "registered enterprise" shall not include commercial banks, savings and mortgage banks, rural banks, savings and loan associations, building and loan associations, development banks, trust companies, investment banks, finance companies, brokers and dealers in securities, consumer's cooperatives and credit unions, and other business organizations whose principal purpose or principal source of income is to receive deposits, lend or borrow money, buy and sell or otherwise deal, trade or invest in common or preferred shares of stocks, debentures, bonds or other marketable instruments generally recognized as securities, or discharge of fiduciary functions.
- b. **Pioneer Enterprise** shall mean a registered enterprise whose status of registration is reflected as such in its BOI Certificate of Registration and (1) engaged in the manufacture, processing or production, and not merely in the assembly or packaging of goods, products, commodities or raw materials that have not been or are not being produced in the Philippines on a commercial scale or (2) which uses a design, formula, scheme, method, process or system of production or transformation of any element, substance or raw materials into another raw

material or finished goods which is new and untried in the Philippines or (3) engaged in the pursuit of agricultural, forestry and mining activities and/or services including the industrial aspects of food processing whenever appropriate, pre-determined by the Board, in consultation with the appropriate Department, to be feasible and highly essential to the attainment of the national goal in relation to the declared specific national food and agricultural program for self sufficiency and other social benefits of the project or (4) which produces non-conventional fuels or sources of energy or uses or converts to coal or other non-conventional fuels or sources of energy in its production, manufacturing or processing operations: Provided, That the foregoing definitions shall not in any way limit the rights and incentives granted to less-developed-area enterprises provided under Title V, Book I of E.O. 226.

- c. **Non-pioneer Enterprise** – shall include all registered producer enterprises other than pioneer enterprises whose status of registration are classified as such in their BOI Certificate of Registration.
- d. **New Firm** – shall mean a BOI registered newly formed/incorporated enterprise or any firm classified as such in its BOI Certificate of Registration.
- e. **Expanding Firm** – shall mean a BOI-registered firm involved in an activity that results in an increase of its existing volume or value of production and classified as such in its BOI Certificate of Registration.
- f. **Indigenous Raw Materials** – used as inputs in the manufacturing or processing of the registered product which cover the following (Approved on December 29, 1998 Board Meeting, published in The Malaya on January 23, 1999):
  - f.i Raw materials that are wholly obtained pursuant to the emerging World Trade Organization (WTO) definition of wholly obtained goods under the harmonized rules of origin which shall include the following:

		<b>NOTES</b>
(a)	Live animals born and raised in the Philippines	The term "animals" covers all animal life, including mammals, birds, fish, crustaceans, mollusks, reptiles, bacteria and viruses
(b)	Animals obtained by hunting, trapping, fishing, gathering or capturing in the Philippines	Covers animals obtained in the wild, whether live or dead, whether or not born and raised in the Philippines
(c)	Products obtained from live animals in the Philippines	Covers products obtained from live animals without further processing, including milk, eggs, natural honey, hair, wool, semen and dung
(d)	Plants and plant products harvested, picked or gathered in the Philippines	Covers all plant life, including fruit, flowers, vegetables, trees, seaweed, fungi and live plants grown in the Philippines
(e)	Minerals and other naturally occurring substances, not included in (a) and (d), extracted or taken in the Philippines	Covers crude minerals and other naturally occurring substances, including rock or solar salt, crude mineral sulphur occurring in free state, natural sands, clays, stones, metallic ores, crude oil, natural gas, bituminous minerals, natural earths, ordinary natural waters, natural mineral waters, natural snow and ice

		<b>NOTES</b>
(f)	Scrap and waste derived from manufacturing or processing operations or from consumption in the country and fit only for disposal or for the recovery of raw materials	Covers all scrap and waste, including scrap and waste resulting from manufacturing or processing operations or consumption in the Philippines, scrap machinery, discarded packaging and household rubbish and all products that can no longer perform the purpose for which they were produced, and are fit only for discarding or for the recovery of raw materials. Such manufacturing or processing operations include all types of processing, not only industrial or chemical but also mining, agricultural, construction, refining, incineration and sewage treatment operations.

- f.ii Intermediate indigenous products are materials which are processed from wholly obtained goods as defined under item (1) above and used as raw material inputs in the production of another good. The indicative list of these indigenous intermediate products is as follows:

<b>INDIGENOUS MATERIALS</b>	<b>INDIGENOUS INTERMEDIATE PRODS.</b>
Abaca	Abaca Pulp / Fiber
Chromite Ore	Chromite Fines / Concentrates / Sand
Clay	Beneficiated Clay
Coal	Beneficiated Coal
Coconut	Crude Coconut Oil
Copper Ore	Copper Concentrates / Cathodes
Crude Petroleum	Refined Petroleum Products (*)
Dolomite	Beneficiated Dolomite
Industrial Stones	Aggregates
Iron Ore	Iron Concentrates, Ingots / Billets, Cast Iron
Limestone	Hydrated Lime, Quick Lime, Industrial and Agricultural Lime
Limestone for Cement	Clinker
Marble	Marble Blocks
Nickle Ore	Beneficiated Nickle Ore / Briquettes
Other Dimension Stones	Blocks
Other Metallic Ores	Concentrates / Smelting Products
Other Non-Metallic Minerals	Beneficiated Non-Metallic Minerals

(\*) not used as fuel

<b>INDIGENOUS MATERIALS</b>	<b>INDIGENOUS INTERMEDIATE PRODS.</b>
Other Scrap / Wastes	Processed Products as raw material inputs to produce another product
Palm Oil	Crude Palm Oil
Plastic Scraps and Wastes	Moulding Compounds as inputs to packaging materials
Precious Metallic Ores	Bullion
Rubber	Latex / Crumb Rubber
Scrap Metal	Billets / Ingots / Cast and Forged Products
Seaweeds	Carrageenan
Seed Cotton	Cotton Lint / Cotton Yarn
Silica Sand	Flat Float Glass
Sugar Cane	Raw Sugar

- g. **Capital Equipment to Labor Ratio** – value of imported, consigned and domestic capital equipment used in the registered activity divided by the number of skilled and unskilled workers actually engaged in the production or performance of the registered activity who are employed for the prior year when the ITH extension will be availed; Provided, That the registered enterprise shall show proof that these workers are governed by the minimum terms and conditions of employment pursuant to Presidential Decree No. 442, as amended, also known as the “Labor Code of the Philippines,” and other labor and social legislations, i.e. SSS coverage, minimum wage, etc.

In the following cases, workers under service contracts shall be deemed “workers” for purposes of computing “Capital Equipment to Labor Ratio”:

1. Where they are actually engaged in the production or performance of the registered activity regardless of the place of operation or where the service is undertaken;
2. Where they are employed primarily to engage in the registered activity notwithstanding the performance of other functions not related thereto; or
3. Where, in tolling operation, they produce intermediate product which is an essential component of the finished/registered product manufactured by the toll contractor/registered firm: Provided, That more than fifty percent (50%) of these workers’ total production shall be utilized in the registered activity.

Provided Further, That in all of the foregoing cases, the workers should have performed service for the entire calendar/fiscal year preceding the year the ITH extension is availed.

- h. **Net Foreign Exchange Earnings** - the total foreign exchange proceeds from the export of the registered product or services as defined in Art. XXIII minus the total foreign exchange costs and expenses incurred in production thereof or the rendering of the export services and the depreciation of the imported capital equipment.
- i. **Net Foreign Exchange Savings** – local sales of the registered product equivalent to the foreign exchange costs of the said product had these been imported minus total foreign exchange costs and expenses incurred in the production of the registered product or the rendering of the export services and the depreciation of capital equipment.
- j. **Commercial Operation** – as defined in Rule1, Section 1(u) of the Implementing Rules and Regulations of E.O. 226, shall be the date specified in the project study submitted to the board or the date when a particular enterprise actually begins production of the registered product for commercial purposes or commercial harvest in the case of agricultural activities, whichever comes first, irrespective of phases or modules or schedule of development. In the case of service-oriented activities, it shall mean the date when a particular registered enterprise begins catering to or servicing its clients on a commercial basis. In the case of export traders and service exporters, the term shall mean the date when the initial export shipment in commercial quantity has been made or initial performance of service as borne out by the appropriate supporting documents.
- k. **Date of Official Filing** – shall mean the date stamped on the application by the BOI's Record Section as recorded in its Record / Log Book for applications for incentives.

### **Rule III**

#### **Rules in the Availment of Income Tax Holiday Bonus Year**

**Section 1. Who Are Qualified.** *New* registered pioneer and non-pioneer enterprises and *expansion* enterprises granted pioneer incentives under Art. 40(a) of E.O. 226, shall be entitled for an additional year of ITH incentive for each of the following criterion:

- a. the project meets the prescribed ratio of capital equipment to number of workers which should *not exceed* US\$10,000.00 to one (1) worker
- b. the *Average* cost of indigenous raw materials used in the manufacture of the registered product is at least fifty (50%) percent of the total cost of raw materials for the *preceding years prior to the extension* unless the Board prescribes a higher percentage
- c. the net foreign exchange earnings or savings amount to at least US\$500,000.00 annually during the *first three (3) years of operation* to be determined by the Board at the end of such three-year period. Provided, that the net foreign exchange savings criteria shall apply as a general rule to registered firms whose products are listed in the IPP at the time of registration of the activity.

Provided that no registered enterprise shall be entitled to ITH in excess of eight years.

**Section 2. When Application Should Be Filed.** Prior to the filing of the *Income Tax Return (ITR)* on the bonus year, the registered enterprise shall file an application with the BOI for the additional ITH period and shall submit proofs of compliance with the criteria mentioned above. An application for a two-year extension maybe granted provided that the enterprise complies with any two of the criteria and wherein one of which should be the US\$500,000.00 minimum net foreign exchange earnings condition.

**Section 3. Conditions and Computation Procedures to Determine Compliance with Criteria.**

1. Capital Equipment to Labor Ratio Criterion

- a. Formula: 
$$\frac{\text{Derived \$ cost of capital equipment}}{\text{Average number of direct labor}}$$

The derived ratio should not exceed US\$10,000.00 to 1 worker to be eligible for a bonus year

- b. Cost of equipment shall be taken from the machinery and equipment asset account of the audited balance sheet and supporting schedule/ledger pertaining to the registered activity covering the taxable year immediately preceding the period applied for extension. In case of consigned equipment, the foreign exchange value shall be taken from the itemized list of machinery and equipment submitted with the application.

The acquisition cost of the equipment and not the depreciated cost shall be used and in converting the value of equipment from pesos to dollars, the average foreign exchange rate at the time of acquisition shall be used (25 October 2000 ManCom Meeting).

- c. Direct Labor – personnel actually engaged in the production of registered product but not including line supervisors, warehousemen, quality control personnel outside the production line, utility and maintenance personnel and subcontracted labor.

The direct labor count shall be taken from the applicant's payroll sheets and verified with the supporting documents showing remittances of SSS premiums and/or withholding taxes due to BIR and shall represent an average of the month end labor count for the same taxable year as in item b.

- d. On the year of the actual availment of the ITH bonus year, the firm must still comply with the capital equipment to labor ratio criterion to be entitled to it (10 October 2000 ManCom Meeting).

2. Net Foreign Exchange Earnings/Savings Criterion

- a. The net foreign exchange earnings/savings should be at least US\$500,000.00 annually for the first three years of commercial operation. In case this is not met, the derived average foreign exchange earnings/savings for the three-year period should at least be US\$500,000.00 to qualify for a bonus year.

- b. Net Foreign Exchange Earnings

b.i Computation Format

	Year 1	Year 2	Year 3	Total
Foreign Exchange Proceeds				
Export Sales	\$	\$	\$	\$
Less: Foreign Exchange Costs				
Imported Raw Materials				
Imported Supplies/Spare Parts				
Depreciation of Imported Equipment				
Others				

Net Foreign Exchange Earnings	\$ =====	\$ =====	\$ =====	\$ =====
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b.ii Export sales value for the first three years of commercial operation shall be taken from the certified sales summary report submitted with the application.

In the case of indirect and constructive export sales, the total peso denominated sales value for each year shall be converted into its foreign exchange equivalent using the corresponding annual average exchange rate set by PRD-BOI and if not available, the rate set by Central Bank.

b.iii The foreign exchange costs/expenses shall be taken from the certified Summary of Imported Costs submitted with the application.

c. Net Foreign Exchange Savings

c.i The firm's registered product must be listed in the IPP at the time of its registration.

c.ii Computation Format

	Year 1	Year 2	Year 3	Total
Sales Volume of Registered Product	units	units	units	units
Multiply by	X	x	x	x
Average CIF Cost in \$ per unit of product	\$/unit	\$/unit	\$/unit	\$/unit
Equivalent \$ Sales	\$	\$	\$	\$
Less: Foreign Exchange Costs Same as in above				
Net Foreign Exchange Savings	\$ =====	\$ =====	\$ =====	\$ =====

c.iii The equivalent foreign exchange value of local sales of the registered product shall be derived by multiplying the annual sales volume reflected in the summary report with the established average annual CIF cost in foreign exchange per unit of the registered product. The CIF cost used by the applicant shall be verified and validated prior to adoption in the evaluation report.

3. Indigenous Raw Material Cost Criterion

a. Computation format

	Year 1	Year 2	Year 3	Year 4	Year 5	Total
A. Total Cost of Raw Materials per AFS	P	P	P	P	P	P
B. Cost of Indigenous Raw Materials	P	P	P	P	P	P
Ratio = B / A x 100	%	%	%	%	%	%

The derived ratio should not be lower than fifty percent (50%) for each taxable year. For illustration purposes, a five-year computation period was considered. In actual cases, this may differ depending on when the extension using this criterion was applied for.

- b. The annual cost of raw materials for all taxable years prior to the extension shall be derived from the Manufacturing Cost Statement of the AFS.
- c. The annual cost of indigenous raw materials, as defined under Rule II, Section 1(f), shall be taken from the certified Breakdown of Raw Material Components submitted in support of the application.
- d. On the year of the actual availment of the ITH bonus year, the firm must still comply with the indigenous raw material cost criterion to be entitled to it (10 October 2000 ManCom Meeting).

**Section 4. Penalty Provision.** Any registered firm who shall file the application for ITH bonus year after the filing of ITR shall be imposed a penalty/fine equivalent to 1% of the final exempt income tax under the extension period to be determined upon evaluation of the actual ITH availment without prejudice to the imposition of a penalty for the late filing of the ITH application as provided under Section 7 of the Rules and Regulations in the Availment of Income Tax Holiday.

## **Rule IV Procedural Steps in the Extension of Income Tax Holiday**

### **Section 1. Documentary Requirements**

- 1. Duly accomplished and notarized application form; and,
- 2. Supporting Documents as follows:
  - 2.i Capital Equipment to Labor Ratio Criterion
    - a. Copy of Audited Financial Statements pertaining to the registered activity covering the taxable year preceding the period applied for extension
    - b. Certified itemized list of machinery and equipment with acquisition date and acquisition cost or certified true copy of the machinery account ledger. The aggregate value appearing in the itemized list should always reconcile with the balance sheet value. If hard copy of list of equipment is more than two pages, submit diskette copy of the list in Excel format.
    - c. Copy of Monthly/Semi-Monthly/Weekly Payroll sheets supported by corresponding remittances of SSS premiums and/or withholding taxes remitted to BIR pertaining to the registered activity for the same taxable year as in item (a). The payroll sheet should indicate the respective positions of the workers. If the number of direct workers is more than twenty (20), submit diskette copy of the names of workers with their positions in Excel format.
  - 2.ii Net Foreign Exchange Earnings/Savings Criterion
    - a. Export sales summary report covering the first three (3) years of commercial operation duly certified by a responsible official of the applicant enterprise. Use the following prescribed report formats for direct, constructive and indirect export sales:

a.i Direct Exports

Summary of Export Sales  
For the Period (Year 1)

<u>Date</u>	<u>Invoice No.</u>	<u>Quantity</u>	<u>Value (US\$)</u>	<u>Exchange Rate</u>	<u>Value (PhP)</u>	<u>BCM Reference</u>
Total for Year 1		-----	-----		-----	
		=====	=====		=====	

(Follow same format for Years 2 and 3)

a.ii Constructive Exports (sales to CBW, PEZA, embassies, etc.)

Summary of Export Sales  
For the Period (Year 1)

Name of Exporter/Buyer A \_\_\_\_\_

<u>Date</u>	<u>Invoice No.</u>	<u>Quantity</u>	<u>Value (PhP)</u>
Sub-total		-----	-----
		=====	=====

Name of Exporter/Buyer B \_\_\_\_\_

<u>Date</u>	<u>Invoice No.</u>	<u>Quantity</u>	<u>Value (PhP)</u>
Sub-total		-----	-----
Grand Total: Year 1		=====	=====

(Follow same format for Years 2 and 3)

a.iii Indirect Exports

Summary of Sales to Direct Exporters  
For the Period (Year 1)

Name of Direct Exporter A \_\_\_\_\_

<u>Date</u>	<u>Invoice No.</u>	<u>Quantity</u>	<u>Value (PhP)</u>
Sub-total		-----	-----
		=====	=====

Name of Direct Exporter B \_\_\_\_\_

<u>Date</u>	<u>Invoice No.</u>	<u>Quantity</u>	<u>Value (PhP)</u>
Sub-total		-----	-----
Grand Total: Year 1		=====	=====

(Follow same format for Years 2 and 3)

1. For indirect exports, submit notarized certification issued by direct exporters in support of item (a.iii) that deliveries of semi-manufactured products/packaging supplies included in the export sales summary

- report were used in the manufacture of their products which were exported from (month/year) to (month/year) and formed part thereof.
2. For constructive exports, submit
    - a. Notarized certification issued by the buyers in support of item (a.ii) that they are licensed operators of CBWs or PEZA registered firms and that deliveries included in the summary of export sales were received by them.
    - b. Notarized certification issued by agency with tax immunity in support of item (a.ii) that deliveries included in the summary of export sales were received by them.
  3. For foreign exchange savings criterion, submit local sales summary report in the prescribed format covering the first three years of commercial operation duly certified by a responsible official of the applicant enterprise and which summary shall indicate the equivalent foreign exchange CIF cost of the registered product had this been imported the basis for which cost should be provided by submitted the appropriate supporting documents.
  4. Summary of Imported Costs duly certified by responsible officer of the applicant enterprise. Use the following prescribed format:

Foreign Exchange Costs for the First Three Years  
In US Dollars

Nature of Expenditure	Year 1	Year 2	Year 3
1. Raw materials imported from own account	_____	_____	_____
2. Imported supplies used in the production of registered products	_____	_____	_____
3. Imported spare parts of machinery and equipment used in the production of registered product	_____	_____	_____
4. Other imported materials used in production purchased from traders/importers (e.g. chemicals, etc.)	_____	_____	_____
5. Machinery and equipment imported from own account	_____	_____	_____
6. Depreciation of imported machinery and equipment used in production	_____	_____	_____
7. Rental payment on consigned/leased machinery and equipment	_____	_____	_____
8. Freight, insurance and handling charges paid for in foreign currency	_____	_____	_____
9. Interest expense/s on CB-approved/registered foreign loans	_____	_____	_____
10. Remuneration of foreign personnel paid for in foreign currency	_____	_____	_____
11. Others (Please specify)	_____	_____	_____

2.iii Indigenous Raw Material Cost Criterion

1. Audited Financial Statements with Detailed Manufacturing Cost Statement for all taxable years from start of commercial operation and prior to the extension. The Income Statement should segregate results of operation of registered activity from other activities.
2. Duly certified Breakdown of Cost of Raw Materials pertaining to the registered activity and indicating what are indigenous.

## **Section 2. Procedural Steps.**

1. Prior to the filing of the Income Tax Return on the bonus year, the registered enterprise shall file an application with the BOI for ITH bonus year. The applicant shall first present to the Incentives Department of the BOI, the duly accomplished application form for checklisting as to completeness of documents and firm's eligibility to avail such incentive.
2. If incomplete, the Incentives Department (BOI) issues a PROVISIONAL RECEIPT indicating the deficient document/report that the enterprise needs to submit within the specified timeframe. The company's representative shall sign the undertaking that it will submit the deficiencies with the understanding that its application shall only be processed upon the BOI's receipt of the deficiencies. It shall also be understood that the application shall be considered withdrawn or abandoned for lack of interest if the deficiencies are not received within the indicated timeframe.
3. If complete, the Incentives Department (BOI) stamps the application "FOR OFFICIAL ACCEPTANCE" and issues Order of Payment for filing fee of P1,500.00 per criterion applied.
4. The applicant officially files the application including the supporting documents indicated in Section 1 above with the Records Section and pays the filing fee. BOI's Record Section stamps the Date of the Official Filing and indicates the application number in the application.
5. Records Section transmits the application to the Incentives Department of BOI for processing and evaluation.
6. The staff of the Incentives Department (BOI) shall evaluate the application and prepare an evaluation report showing firm's eligibility and compliance with the criterion used for approval of recommended action and signature of the Incentives Department Director.
7. The evaluation report is presented to the BOI Management Committee for action and then to the Board of Governors of the BOI for confirmation and ratification of the Management Committee's action.
8. The staff prepares the letter advice on the BOI's action on the registered enterprise's application for signature of the Executive Director of the Technical Services Group.
9. The letter advice is released to the Records Section for mailing or for pick-up by the proponent.

## **Rule V Repeal/Effectivity Clause**

**Section 1. Amendment, Modification and/or Repeal.** The Board of Investments has the power and the authority to amend, modify and/or repeal any of the provisions of these Rules and Regulations on the Availment of the Income Tax Holiday Bonus Year under Art. 39(a)(1) of E.O. 226 as amended by R.A. 7918

**Section 2. Effectivity.** The foregoing Rules and regulations shall take effect immediately.