

No Longer Special?: An Analysis of the Withdrawal of Tax Incentives in Special Economic Zones and Its Legal Implications

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In this Article, the Author weighs the conflicting interests of the State and the taxpayer (business locator) in the matter of withdrawal of tax incentives for special economic zones. On the one hand, such withdrawal measure forms an integral part of the State's avowed fiscal rationalization policy. On the other, it spells a breach of contract to the prejudice of the taxpayer who principally relied on the tax incentives as consideration to make investments in the country. Culling from local and foreign sources alike, the work examines the effects of fiscal incentive laws and the need, if any, to rationalize them. The Author presents a comparison of the Philippines' standing vis-à-vis other Southeast Asian countries showing how far behind we are in terms of the inflow foreign investments — this, despite our multiple investment policies.

By way of conclusion, it was asserted that the proposed withdrawal scheme would amount to a violation of the non-impairment clause of the Constitution, having sufficiently established the existence of a contract between the State and the business locator. Otherwise, the same can also be considered violative of due process, arguing that the end does not justify the means, which, in this case, are largely unreasonable, whimsical and arbitrary. Thus, the State could not, under the guise of police power, withdraw tax incentives without observing the fundamental rights of the business locator.