



PHILIPPINES: TOWARDS THE LIBERALIZATION OF FOREIGN INVESTMENTS

**A LOOK BACK AT THE RECENT DEVELOPMENTS AND NEW LAWS
ADOPTED TO ENCOURAGE FOREIGN INVESTMENTS**

SUMMARY



RETAIL TRADE LIBERALIZATION ACT

- Republic Act No. 11195
- Implementing rules and regulation
- New requirements for foreign retailers
- Minimum paid-up capital
- Investment per store



FOREIGN INVESTMENT ACT

- Republic Act No. 11647
- Background
- Inter-Agency investment Coordination Promotion Committee
- Changes for SMEs



PUBLIC SERVICE ACT

- Republic Act 11659
- Background
- New definition of public utility
- Critical infrastructures
- Foreign equity restrictions
- Reciprocity condition



CREATE ACT

- Corporate income tax reduction
- Fiscal incentive modernization
- Duration of incentives



TIMELINE



CREATE LAW

01

27 MARCH 2021



RETAIL TRADE
LIBERALIZATION
ACT

02

6 JANUARY 2022



FOREIGN
INVESTMENT ACT

03

2 MARCH 2022



PUBLIC SERVICE
ACT

04

25 MARCH 2022



PHILIPPINE
GENERAL ELECTION

05

9 MAY 2022

RETAIL TRADE LIBERALIZATION ACT (RTLA)

- Republic Act No. 11195
- Implementing rules and regulation
- New requirements for foreign retailers
- Minimum paid-up capital
- Investment per store



AMENDMENTS TO THE RTLA (RA 11195)

- **Eases the requirements** for foreign retailers to invest or engage in retail trade in the Philippines (paid-up capital and investment per store)
- Removes the **categories for prequalification** under the RTLA and sets a single minimum paid-up capital for all types of foreign-owned retail enterprises.
- Removes Requirement for **Certificate of prequalification** Issued by the BOI (minimum net worth requirement of USD 200 million, minimum of 5 retailing branches or franchises in operation around the world, etc...)
- Clarifies the **documentary requirements** to be submitted to the Company Registration and Security Exchange Commission (SEC)
- Removes Requirement of **Public Offering of Shares**



Republic Act No. 11595

Published on	6 January 2022
Took effect on	21 January 2022
IRR¹ published on	12 March 2022
IRR¹ effective as of	27 March 2022

1. Implementing Rules and Regulations (IRR)

NEW CAPITAL REQUIREMENTS FOR FOREIGN RETAILERS

MINIMUM PAID-UP CAPITAL

− 80%



PHP 25 MILLION

(approximately USD 500,000)

RA 11595 lowers the minimum paid-up capital for foreign-owned retail trade enterprises from USD 2.5 Million to PHP 25 million.

MIN. INVESTMENT PER STORE

− 75%



PHP 10 MILLION

(approximately USD 200,000)

RA 11595 lowers the minimum investment per store for foreign-owned retail trade enterprises from USD 830,000 per store to PHP 10 million.

FOREIGN RETAILER

FOREIGN NATIONAL, PARTNERSHIP, ASSOCIATION, OR CORPORATION OF WHICH **MORE THAN FORTY PERCENT (40%) OF THE CAPITAL STOCK** OUTSTANDING AND ENTITLED TO VOTE IS OWNED AND HELD BY SUCH FOREIGN NATIONAL, ENGAGED IN RETAIL TRADE.

INVESTMENT PER STORE REQUIREMENT

The paid-up capital may be used to **purchase the following assets** for purposes of complying with the investment per store requirement:

BUILDINGS

Carrying amount of the buildings owned by an entity. The carrying amount is the original purchase price, plus later capitalized additions



EQUIPMENT

Computers, Softwares, Office Equipment, Vehicles



LEASEHOLD

Lease and leasehold improvements pertaining to the customization of rental property



INVENTORY

Raw Materials, Finished goods



FURNITURE

Other equipment that have no permanent connection to the structure of a building or utilities



FACILITIES ¹

Warehouse, administrative office, preparation or storage facilities.



1. Shall be pro-rated among the number of stores being served.



ONLINE RETAIL

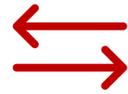
“STORE” IS DEFINED AS A PHYSICAL OUTLET ESTABLISHED IN THE COUNTRY WHERE GOODS ARE SOLD ON A RETAIL BASIS. FOR PURPOSES OF ONLINE RETAILING, THE WAREHOUSE WHERE THE GOODS ARE STORED SHALL BE DEEMED A STORE.

OTHER REQUIREMENTS FOR FOREIGN RETAILERS



CAPITAL REMITTANCE

Certificate of Inward Remittance of Foreign Exchange issued by a bank or other proof, such as a Bank certification, certifying that such capital investment is deposited and maintained in a bank in the Philippines



RECIPROCITY

Certificate of Reciprocity from the proper official of the home state of the foreign retailer or the local embassy of the home state in the Philippines stating that such state provides reciprocity to Filipinos.



ANNUAL REPORTING

Submission of annual reporting requirements to the SEC or DTI with an attachment to the audited financial statements certified by a responsible officer.



ACCOUNTING RECORDS

Keeping of financial records, inventory and books of accounts available at all times for inspection by the SEC or DTI, as applicable.



FOREIGN INVESTMENT ACT (FIA)

- Republic Act No. 11647
- Amendments and provisions
- Inter-Agency investment Coordination Promotion Committee
- Changes for SMEs
- Foreign equity and participations
- Foreign Investment Negative List



AMENDMENTS TO THE FIA (RA 11647)

- **Streamline the Foreign Investment Negative List (FINL)**, which listed a number of sectors where foreign participation is banned. The idea is to make the FINL more positive.
- **Clarify the list of industries to be reviewed.** They are now limited to foreign investments involving military-related industries, cyber infrastructure, pipeline transportation, or such other activities which may threaten territorial integrity, safety, and security.
- **Allows the manufacture or repair of items requiring prior clearance and authorization from Department of National Defense (DND)** as long as the enterprise is authorized by the Secretary of National Defense.
- **Excludes the “practice of professions” from the FINL.** The amendment clarified the definition of investments in the practice of professions.
- **Establishes the Inter-Agency Investment Promotion Coordination Committee (IIPCC)** to undertake the promotion and facilitation efforts to encourage foreign investments in the country.



Republic Act No. 11647

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IRR ¹ effective as of	Pending

1. Implementing Rules and Regulations (IRR)

MICRO AND SMALL DOMESTIC ENTERPRISES (SMEs)

- RA 11647 still reserves micro and small domestic enterprises (SMEs) with paid-in equity capital of **less than USD 200,000 for Philippine nationals**.
- However, this threshold can be reduced to **USD 100,000 if the corporation meets the following requirements:**

01

TECHNOLOGY

The enterprises **involved in advanced technology**, as determined by the Department of Science and Technology.



02

START-UP ¹

Enterprise **endorsed as start-ups or start up enablers²** by the lead host agencies pursuant to the Innovative Startup Act (RA 11337).



03

MANPOWER

Enterprise **having majority of its employees as Filipinos**, and where the number of Filipino employees are **not less than 15**.



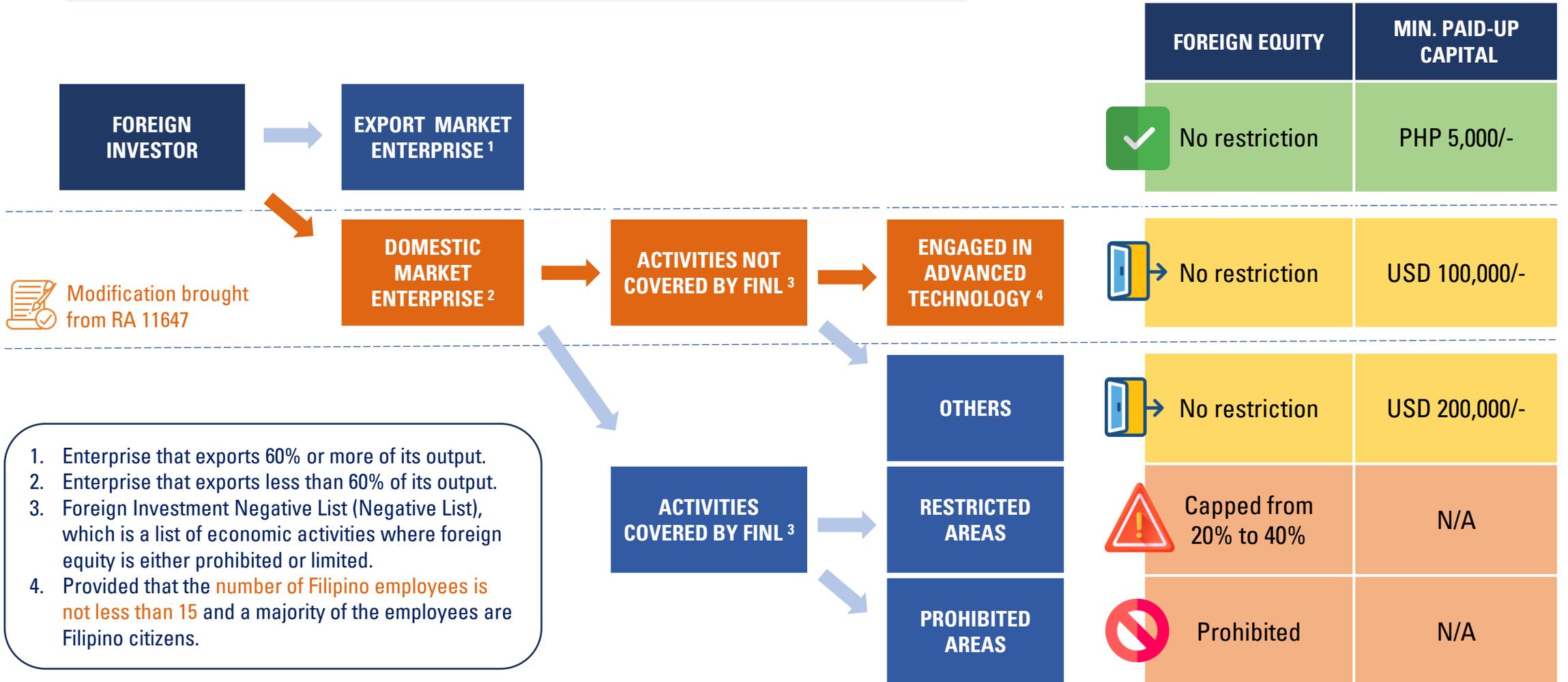
FOREIGN INVESTMENT

THE TERM "FOREIGN INVESTMENT" SHALL MEAN AN **EQUITY INVESTMENT MADE BY A NON-PHILIPPINE NATIONAL** IN THE FORM OF FOREIGN EXCHANGE AND/OR OTHER ASSETS ACTUALLY TRANSFERRED TO THE PHILIPPINES AND DULY REGISTERED WITH THE BANGKO SENTRAL NG PILIPINAS.

1. Startups refer to persons or registered entities in the Philippines that aim to develop an innovative product, process or business model.
2. Startup enablers refer to persons or registered entities in the Philippines registered under the Philippine Startup Development Program that provides goods, services, or capital identified to be crucial in supporting the operation and growth of startups.

FDI LIBERALIZATION | FOREIGN INVESTMENT ACT

FOREIGN EQUITY AND PARTICIPATION



FOREIGN INVESTMENT NEGATIVE LIST (FINL)



Modified by amendment of Foreign Investment Act, Retail Trade Liberalization Act, or Public Service Act



LIST A

(Foreign ownership is limited by mandate of the constitution and specific laws)

NO FOREIGN EQUITY

- Mass media, except recording
- ~~The practice of the following professions: pharmacy, radiologic and x-ray technology, criminology, forestry, and law~~
- Retail trade enterprises with a paid-up capital of less than PHP 25 million
- Cooperatives
- Private security agencies
- Small-scale mining
- Ownership, operation and management of cockpits
- Utilization of marine resources in archipelagic waters, territorial sea and exclusive economic zones, as well as small-scale utilization of natural resources in rivers, lakes, bays and lagoons
- Manufacture, repair, stockpiling and/or distribution of nuclear weapons, biological, chemical, and radiological weapons and anti-personnel mines
- Manufacture of firecrackers and other pyrotechnic devices

FOREIGN EQUITY LIMITED TO 20%

- Private radio communications network

FOREIGN EQUITY LIMITED TO 30%

- Advertising



LIST A

(Foreign ownership is limited by mandate of the constitution and specific laws)

FOREIGN EQUITY LIMITED TO 25%

- Private recruitment companies, whether for local or overseas employment
- Contracts for the construction and repair of locally funded public works, except infrastructure/development
- projects covered by Republic Act No. 7718 (RA 7718) and projects that are foreign-funded or assisted and required to undergo international competitive bidding

FOREIGN EQUITY LIMITED TO 40%

- Exploration, development and utilization of natural resources
- Ownership of private lands
- ~~Operation of public utilities~~
- Educational institutions
- Contracts for the supply of materials, goods and commodities to government-owned or controlled corporations, companies, agencies
- Adjustment companies
- Culture, production, milling, processing, trading (except retailing) and acquisition of rice and corn and the byproducts thereof
- Facility operator of an infrastructure or a development facility requiring a public utility franchise
- Ownership of condominium units
- Operation of deep-sea commercial fishing vessels

FOREIGN INVESTMENT NEGATIVE LIST (FINL)



Modified by amendment of Foreign Investment Act, Retail Trade Liberalization Act, or Public Service Act



LIST B

(Foreign ownership is limited for reasons of security, defense, risk to health and morals and protection of SMEs)

FOREIGN EQUITY LIMITED TO 40%

- Domestic market enterprises (i.e., entities that do not export 60% or more of their output) with a paid-in equity capital of less than the equivalent of USD 200,000
- Domestic market enterprises that involve advanced technology or employ at least 15 direct employees provided that a majority of the employees are Filipino citizens with paid-in equity capital of less than the equivalent of USD 100,000
- Manufacture and distribution of dangerous drugs
- Manufacture, repair, storage, and/or distribution of products and/or ingredients requiring Philippine National Police (PNP) clearance, as follows: (a) firearms (handguns to shotguns), parts of firearms and ammunition therefor, instruments or implements used or intended to be used in the manufacture of firearms; (b) gunpowder; (c) dynamite; (d) blasting supplies; (e) ingredients used in making explosives; and (f) telescopic sights, sniper scope and other similar devices
- ~~Manufacture, repair, storage and/or distribution of products requiring Department of National Defense (DND) clearance, as follows: (a) guns and ammunition for warfare; (b) military ordnance and parts thereof (e.g., torpedoes, depth charges, bombs, grenades, missiles); (c) gunnery, bombing and fire control systems and components; (d) guided missiles/missile systems and components; (e) tactical aircraft (fixed and rotary-winged), parts and components thereof; (f) space vehicles and component systems; (g) combat vessels (air, land and naval) and auxiliaries; (h) weapons repair and maintenance equipment; (i) military communications equipment; (j) night vision equipment; (k) stimulated coherent radiation devices, components and accessories; (l) armament training devices; and (m) others as may be determined by the Secretary of the DND~~
- Sauna and steam bathhouses, massage clinics and other similar activities regulated by law
- All forms of gambling, except those covered by investment agreements with the Philippine Amusement and Gaming Corporation (PAGCOR)



PUBLIC SERVICE ACT (PSA)

- Republic Act 11659
- Background
- New definition of public utility
- Implications for foreign investors
- Critical infrastructures
- Reciprocity condition



AMENDMENTS TO THE PSA (RA 11659)

- Amends the Public Service Act by **enabling 100 percent foreign ownership of public services**
- **Clarifies the definition of “Public Utility”** sectors since under the 1987 Constitution, only corporations that are at least 60 percent owned by Filipinos are allowed to operate as a public utility.
- **Foreign equity restrictions on most public service companies are removed**, with the exception of those considered as public utilities and critical infrastructures. **Critical infrastructures** are subject to certain nationality restrictions and responsibilities.
- **Companies controlled by or acting on behalf of a foreign government or foreign state-owned enterprises** are subject to restrictions
- **The President can suspend or prohibit** transactions or investments in a public service.



Republic Act No. 11659

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IRR¹ effective as of	Pending

1. Implementing Rules and Regulations (IRR)

IMPLICATIONS FOR FOREIGN INVESTORS

-  Makes a **clear distinction** between the definition of **public services versus public utilities**
-  No restriction on foreign ownership for industrial undertakings **not** classified as public utilities
-  Foreign **equity restrictions will be eased** out which shall attract more global players that will modernize several sectors such as **telecommunications, shipping, air carriers, railway, and subways**

PHILIPPINE CONSTITUTION

(ARTICLE XII, SECTION 11)

NO FRANCHISE, CERTIFICATE, OR ANY OTHER FORM OF AUTHORIZATION FOR **THE OPERATION OF A PUBLIC UTILITY** SHALL BE GRANTED EXCEPT TO CITIZENS OF THE PHILIPPINES OR TO CORPORATIONS OR ASSOCIATIONS ORGANIZED UNDER THE LAWS OF THE PHILIPPINES, **AT LEAST SIXTY PER CENTUM** OF WHOSE CAPITAL IS OWNED BY SUCH CITIZENS

DEFINITION OF PUBLIC UTILITIES

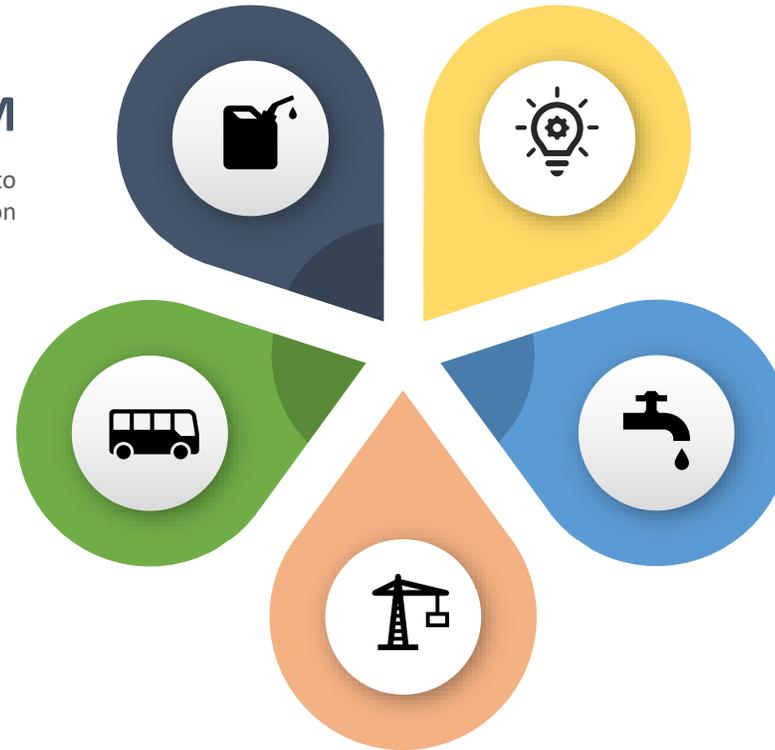
PUBLIC UTILITY : Refers to a public service, concessionaires, joint ventures, and other similar entities that operate, manage or control for public use any of the following:

PETROLEUM

Operation and maintenance of pipeline transmission systems to ensure an uninterrupted and adequate supply and transmission of petroleum and petroleum products to the public.

PUBLIC VEHICLES

Internal combustion engine vehicles that carry passengers and/or domestic cargo for a fee, offering services to the public,



ELECTRICITY

Distribution and transmission of electricity through the conveyance of electric power by a distribution utility through a distribution system or high voltage backbone system.

WATER

Operation and maintenance of water pipeline distribution systems to ensure an uninterrupted and adequate supply and distribution of potable water and the operation and maintenance of wastewater pipeline systems except desludging companies and septic tanks.

SEAPORTS

Place where ships may anchor or tie up for the purpose of shelter, repair, loading or discharge of passengers or cargo, or for other such activities connected with water-borne commerce, including all the land and water areas and the structures, equipment and facilities related to these functions.

CRITICAL INFRASTRUCTURES



Safeguards were implemented to **limit the foreign ownership** in public services that are classified as critical infrastructure



Critical infrastructure is defined as any public service which owns, uses, or operates systems and assets, whether physical or virtual, so vital to the Republic of the Philippines that the incapacity or destruction of such systems or assets would have a detrimental impact on national security, including telecommunications and other such vital services as may be declared by the President.



Foreign nationals are **allowed to own more than 50% of capital** in public services engaged in the operation and management of critical infrastructure, but **only if the country of such foreign national grants reciprocity** to Philippine nationals under foreign law or a treaty.



Entities managing or operating critical infrastructure are now mandated to **act on complaints or service interruptions within one day** from receiving the complaint. They are also required to **submit monthly report detailing the service interruptions, complaints and actions taken** on each complaint.

CRITICAL INFRASTRUCTURES

	Telecommunications ¹
	Airlines
	Domestic shipping
	Railways
	Subways

1. Telecommunications are explicitly considered as critical infrastructures under the law

CORPORATE RECOVERY AND TAX INCENTIVES FOR ENTERPRISES ACT (CREATE)

- Background
- Corporate income tax reduction
- Other taxes modernization
- Tax incentives



BACKGROUND

- **Second package** of the **Comprehensive Tax Reform**, the first one being the **TRAIN Act** (Tax Reform for Acceleration and Inclusion Act) that took effect on 1 January 2018 and introduced reforms on taxation of individuals, transfer taxes, indirect taxes, and other types of taxes.
- **Largest fiscal stimulus** for businesses in the Philippines recent history providing private enterprises more than P1 trillion worth of tax relief over the next 10 years with a **significant cut on the tax rate for corporations**.
- Provides other forms of **tax relief** which are part of a package of **economic recovery measures** implemented by the government to address the varying needs and concerns of the business sector brought about by the COVID-19 pandemic.
- Provides measures that **rationalize the grant of fiscal incentives** to targeted investors
- Introduced an enhanced incentives package that is **performance-based, time-bound, targeted, and more transparent**.



Republic Act No. 11534

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IRR¹ effective as of	21 June 2021

1. Implementing Rules and Regulations (IRR)

CORPORATE INCOME TAX REDUCTION

TAXPAYER	BEFORE	CREATE LAW	EFFECTIVITY	SUBSEQUENT YEARS				
				2023	2024	2025	2026	2027
 DOMESTIC CORPORATIONS ¹	30%	25%	1 July 2020	24%	23%	22%	21%	20%
 SMALL AND MEDIUM ENTERPRISES ²	30%	20%	1 July 2020	NC	NC	NC	NC	NC
 RESIDENT FOREIGN CORPORATIONS ³	30%	25%	1 July 2020	24%	23%	22%	21%	20%
 REGIONAL OPERATING HEADQUARTERS (ROHQs) ⁴	10%	25%	1 July 2020	NC	NC	NC	NC	NC
 NON-RESIDENT FOREIGN CORPORATIONS ⁵	30%	25%	1 July 2020	NC	NC	NC	NC	NC

1. Business entity that is organized, registered, and existing under Philippine laws.
2. Domestic corporation with (i) net Taxable Income of not more than P5M; and (ii) total assets of not more than P100M (excluding land on which the business entity's office, plant and equipment are situated).
3. Foreign corporations engaged in trade or business in the Philippines through a branch office
4. Extension of a foreign corporation allowed to derive income in the Philippines by performing qualifying services to its head office, affiliates, subsidiaries or branches in the Asia-Pacific (APAC) region and other foreign markets.
5. Corporation which does not have any presence in the Philippines but derives income in the Philippines

OTHER TAXES MODERNIZATION

DESCRIPTION	BEFORE	CREATE LAW	EFFECTIVITY
MINIMUM CORPORATE INCOME TAX (MCIT) ¹	2%	1%	1 July 2020 – 30 June 2023
IMPROPERLY ACCUMULATED EARNINGS TAX (IAET) ²	10%	NIL	1 July 2020
PERCENTAGE TAX ³	3%	1%	1 July 2020 – 30 June 2023
CAPITAL GAIN TAX ON UNLISTED SHARES (for both resident and nonresident foreign corporations)	5/10%	15%	1 July 2020
PROPRIETARY EDUCATIONAL INSTITUTIONS AND HOSPITALS	10% (net taxable income)	1% (net taxable income)	1 July 2020 – 30 June 2023

1. Minimum corporate income tax (MCIT) on gross income, beginning in the fourth taxable year following the year of commencement of business operations. MCIT is imposed where the CIT is less MCIT on gross income.
2. Prior to CREATE, IAET was imposed on the improperly accumulated taxable income of a corporation formed for the purpose of avoiding the income tax on its shareholders, by permitting the earnings and profits of the corporation to accumulate, instead of distributing them to the shareholders as dividends
3. Business tax imposed on persons not subject to VAT

ELIGIBILITY FOR TAX INCENTIVES

- CREATE has instituted an **incentive system** that is based on **industry and location tiers**. This allows the fiscal incentive system to reflect the industrial strategy goals of the country.
- Longer incentives will be given to activities **in more sophisticated sectors and less developed areas**.
- The **Investment Promotion Agencies (IPAs)** are responsible to facilitate and expedite the setting up and operation of investment projects, assist in the registration process, and provide information and advice on the incentives package applicable.
- Fiscal incentives may be availed provided the following **requirements** are met:
 - ✓ Be engaged in a project or activity included in the **Strategic Investment Priority Plan ("SIPP")**
 - ✓ Meet the **target performance** metrics after the agreed time period
 - ✓ Comply with **accounting requirements** and the e-receipting and e-sales requirement of the Tax Code
 - ✓ Submit **annual reports of beneficial ownership** of the organisation and related parties.



TIER 3 INVESTMENTS

Advanced digital production technologies of the fourth industrial revolution

Industries producing equipment, parts, and services that embed new technologies

Industries engaging in research and development (R&D) activities and commercialisation of R&D that leads to accelerate innovation and "increase the added value on products and services."

Others: robotics, biotechnology, additive manufacturing, photonics, advanced materials, nanotechnologies, advanced manufacturing, Artificial Intelligence (AI), mobility, blockchain, cybersecurity, satellite technology, big data, Internet of Things (IoT), augmented and virtual reality, micro and nanoelectronics, and cognitive technology.

TAX INCENTIVES UNDER CREATE LAW

Income Tax Holiday (ITH)

Profits are exempted from tax for 4 to 7 years, depending on the combination of both location and industry priorities, as determined in the Strategic Investment Priority Plan (SIPP)

Special Corporate Income Tax (SCIT)

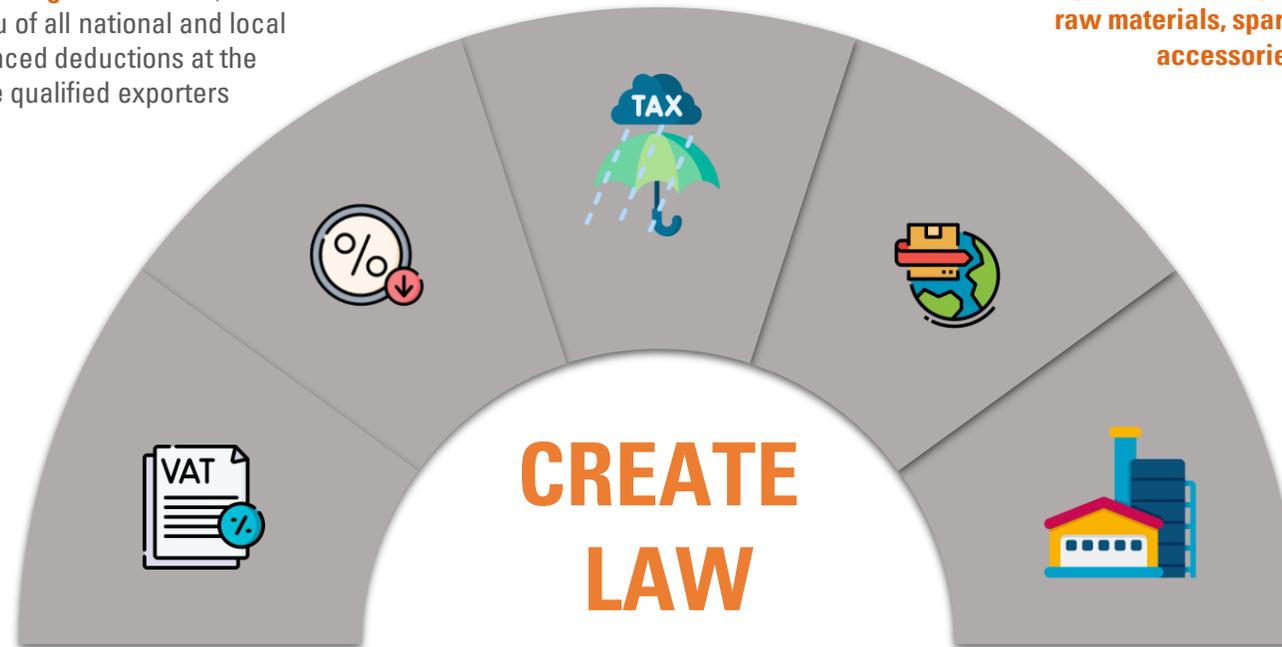
5% taxation rate on gross income (after ITH period) in lieu of all national and local taxes or enhanced deductions at the option of the qualified exporters

Customs duty exemption

for importations of capital equipment, raw materials, spare parts, or accessories

Enhanced Deductions (ED)

- Depreciation of qualified **capital expenditure** (10% for buildings and 20% for machinery and equipment)
- **Labor expense** (50%)
- **Research and development** (100%)
- **Training expense** (100%)
- **Domestic input expense** (50%)
- **Power expense** (50%)
- **Reinvestment allowance** for manufacturing industry
- **Net Operating Loss Carry Over (NOLCO)** allowed as deduction from gross income within the next 5 years



VAT exemption

on importation and VAT zero-rating on domestic purchases.

DURATION OF TAX INCENTIVES UNDER CREATE LAW



EXPORT ENTERPRISES ¹

LOCATION	TIER I		TIER II		TIER III	
	ITH ³	ED ⁴ /SCIT ⁵	ITH ³	ED ⁴ /SCIT ⁵	ITH ³	ED ⁴ /SCIT ⁵
NATIONAL CAPITAL REGION (NCR)	4 Years	10 Years	5 Years	10 Years	6 Years	10 Years
METROPOLITAN AREAS OR AREAS CONTIGUOUS TO NCR	5 Years	10 Years	6 Years	10 Years	7 Years	10 Years
ALL OTHER AREAS	6 Years	10 Years	7 Years	10 Years	7 Years	10 Years



DOMESTIC MARKET ENTERPRISES ²

LOCATION	TIER I		TIER II		TIER III	
	ITH ³	ED ⁴ /SCIT ⁵	ITH ³	ED ⁴ /SCIT ⁵	ITH ³	ED ⁴ /SCIT ⁵
NATIONAL CAPITAL REGION (NCR)	4 Years	5 Years	5 Years	5 Years	6 Years	5 Years
METROPOLITAN AREAS OR AREAS CONTIGUOUS TO NCR	5 Years	5 Years	6 Years	5 Years	7 Years	5 Years
ALL OTHER AREAS	6 Years	5 Years	7 Years	5 Years	7 Years	5 Years

1. Enterprise that exports 60% or more of its output.
2. Enterprise which produces goods for sale, or renders services to the domestic market entirely or if exporting a portion of its output fails to consistently export at least sixty percent (60%) thereof.

3. ITH: Income Tax Holiday.
4. ED: Enhanced Deductions
5. SCIT: Special Corporate Income Tax



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- ✓ Mergers & Acquisitions
- ✓ Restructuring & Forensic

ACCOUNTING



- ✓ Bookkeeping
- ✓ Budgeting & Forecasts
- ✓ Consolidation Package
- ✓ Financial Reporting
- ✓ Cash Flows
- ✓ Financial Statements

TAX



- ✓ Corporate Income Tax
- ✓ VAT Administration
- ✓ Compliance Review
- ✓ Personal Income Tax
- ✓ Withholding Tax Returns

PAYROLL



- ✓ Payslips & Payroll Reports
- ✓ Leave management
- ✓ Payment Processing
- ✓ Contributions & taxes
- ✓ Benefits Administration
- ✓ Entry / Exit Procedures

BUSINESS SET-UP



- ✓ Company Incorporation
- ✓ Employment of record (EOR)
- ✓ Bank Account Opening
- ✓ Representative Office
- ✓ Immigration & Work Permit
- ✓ Hosting Services

CORPORATE SECRETARIAL



- ✓ Company Secretary
- ✓ Registered Address
- ✓ Nominee Director
- ✓ Governance Review

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