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TAX LAW FOR BUSINESS

*BDB Law's "Tax Law for Business" appears in the opinion section of **Business Mirror** every Tuesday.*

Less negative 11th RFIN

The Foreign Investments Act of 1991 declared it as a policy of the state to attract, promote and welcome productive investments from foreign investors in activities or areas which significantly contribute to the national industrialization and socioeconomic development. Foreign investments are encouraged in enterprises that significantly expand livelihood and employment opportunities; enhance economic value of farm products; promote the welfare of consumers; expand the scope, quality and volume of exports and their access to foreign markets; and/or transfer relevant technologies in agriculture, industry and support services.

In attracting foreign investments, there is generally no restriction on the extent of foreign ownership of businesses operating in the Philippines. There are, however, specific industries or activities where foreign ownership is restricted or limited by the Constitution and/or by the applicable laws. Others are regulated by special laws and restricted or limited due to some policy considerations.

To guide the investing public, the Foreign Investments Act mandates the formulation of a Regular Foreign Investment Negative List covering investment activities open to foreign investment and those reserved to Filipinos. Since the effectivity of the Foreign Investment Act, there had been 11 RFINL that were issued, each of which had its own peculiarities. The latest of this is the 11th RFINL, which was signed by the President on October 29, 2018. This 11th RFINL aims to relax restrictions on foreign participation on the regulated activities or areas. With this, the 11th RFINL was made less negative.

One of the notable changes made was the removal of "no foreign equity" restriction on the following five businesses or activities: (a) Internet business (Internet access providers that merely serve as carriers for transmitting messages, rather than being the creator of messages/information); (b) teaching at higher education levels provided that the subject being

taught is not a professional subject; (c) training centers engaged in short-term high-level skills development that do not form part of the formal education system; (d) adjustment companies; and (e) wellness centers. In other words, 100-percent foreign equity is now allowed in these areas.

The 11th RFINL also liberalized the practice of some professions in our country. Foreigners may now practice the following professions, provided that their home country allows Filipinos to be admitted to the practice of these professions: (a) accountancy; (b) agriculture; (c) architecture; (d) chemical, civil, electrical, mechanical, geodetic, metallurgical, mining and sanitary engineering; (e) customs brokers; (f) dentistry; (g) medicine; (h) nursing; (i) pharmacy; and (j) physical and occupational therapy.

Foreign equity participation in contracts for the construction and repair of locally funded public works, subject to applicable regulatory frameworks, was increased from 25 percent to 40 percent. Likewise, foreigners may now also own up to 40 percent of equity (previously at 20 percent) in private radio communication network companies.

According to sources, our country is one of the most restrictive countries toward foreign direct investments, and so, these changes were introduced. The direction is geared toward “greater liberalization” as, in fact, amendments to some of our laws including the Public Service Act, Retail Trade Act and no less than our Foreign Investment Act are in the works to achieve this.

I just hope that the changes already made and those which are proposed would meet the intended purposes or objectives of their introduction (more foreign investment, greater competition, more jobs and improvement of the economy). I also hope that, whatever the good end in mind, nothing which are too less negative to defeat our right to utilize our resources would be placed. It is not bad, anyway, to maximize the resources that we could get, including those that the foreigners may contribute, so long as we’re protected.

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