

SOME NEW POINTS OF THE DRAFT LAW ON CORPORATE INCOME TAX (AMENDED)

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The Law on Corporate Income Tax (CIT) 2008 was approved by the 12th National Assembly at the third session on June 3, 2008 and took effect from January 1, 2009. So far, this law has been amended and supplemented 03 times by the Law on CIT amended and supplemented in 2013; the Law on amending and supplementing the Law on Taxation 2014, and the Law on Investment 2020. After more than 15 years of implementation, the Law on CIT has come to life and significantly impacted various aspects of society. However, certain provisions of the applicable Law on CIT have shown inadequacies and are no longer suitable for the current economic context. Consequently, the Ministry of Finance has developed a project dossier of the Law on CIT (amended) (the **Draft Law**) to submit to the Government with the goal of institutionalizing guidelines and policies on reforming the CIT policy system, meeting practical and new development requirements of the economy, and ensuring the synchronization of the legal system. The following are some notable new points of the Draft Law:

Supplementing regulations on global anti-base erosion rules

To ensure consistency with Resolution 107/2023/QH15 regarding the application of additional CIT in accordance with global anti-base erosion rules, the Draft Law sets forth the provisions on the collection of additional CIT in alignment with global anti-base erosion rules (Article 1 of the Draft Law), with notable contents as follows:

(i) Supplementing the group of taxpayers (Article 2 of the Draft Law) to include constituent units of multinational corporations with revenue equivalent to 750 million euros (EUR) or more in the consolidated financial statements of the ultimate parent company for at least 2 out of the 4 years immediately preceding the fiscal year, which are required to pay additional CIT in accordance with Chapter IV of the Draft Law, except for certain cases such as government organizations, international organizations, non-profit organizations, etc.



(ii) Supplementing Chapter IV on additional CIT in accordance with global anti-base erosion rules. This includes several key contents such as the interpretation of specific terms (e.g., corporations, multinational corporations, consolidated financial statements, etc.), regulations on qualified domestic minimum top-up tax (QDMTT), income inclusion rule (IIR), undertaxed payments rule (UTPR), and subject-to-tax rule (STTR).

The recognition and inclusion of the above regulations in the Draft Law aim to preserve Viet Nam's tax rights in the context of countries around the world implementing the application of Pillar 2 on global minimum tax; contribute to generating revenue for the state budget; at the same time, ensure a robust legal framework for the implementation of international tax issues of global nature related to the application of UTPR and STTR in Viet Nam once it is eligible according to the guidelines, agreements of OECD.

Adding CIT-exempt income from the transfer of carbon credits, interest, and the transfer of green bonds for the first time after issuance

The current Law on CIT stipulates 11 groups of corporate incomes that are exempt from CIT. However, in fact, a number of issues have arisen that need to be studied and supplemented to align with the country's socio-economic context. Compared to the current Law, the Draft Law adds tax-exempt income groups such as income from the transfer of carbon credits, interest, and the transfer of green bonds for the first time after issuance. This

regulation is supplemented to ensure consistency with the Law on Environmental Protection regarding carbon market development, regulations on incentives related to green bond issuance, thereby encouraging environmental protection, reducing greenhouse gas emissions, promoting green and sustainable development, contributing to the implementation of Viet Nam's commitments to the international community.

At the same time, the Draft Law also omits the abbreviation of "CERs" in the phrase of emission reduction certificate in clause 10, Article 4 of the current Law on CIT to ensure the application of tax exemption to the income from transfer of emission reduction certificates in general, not limited to CERs as currently specified. In practice, in addition to the Certified Emission Reductions (CERs), enterprises can also transfer Voluntary Emission Reductions (VERs). Accordingly, both CERs and VERs are essentially the same in terms of the goal of encouraging environmental protection through reducing greenhouse gas emissions and orienting towards sustainable development.

Abolishing the regulation on the threshold value of 20 million Viet Nam dong or more for goods purchase invoices, recognizing non-cash payment documents when determining expenses deductible from CIT

The current Law on CIT stipulates that enterprises are entitled to deduct all expenses if they fully meet the following conditions: **(i)** They are actual expenses incurred related to the enterprises' production and business activities; expenses for vocational education activities; or expenses for the enterprises' performance of national defense and security tasks in accordance with the law; **(ii)** Expenses are made with sufficient invoices and documents as prescribed by law. *Regarding invoices for each purchase of goods and services valued at 20 million Viet Nam dong or more, it is required to provide non-cash payment documents, except where such documents are not mandated under law.*

From practical implementation, the regulation on the 20 million Viet Nam dong threshold needs to be reconsidered to avoid adverse impacts on enterprises in remote areas, align with banking payment characteristics, and limit the situation of splitting bills. Additionally, according to Decision 1813/QĐ-TTg approving the Scheme for the development of non-

cash payment in Viet Nam, and non-cash payment in tax administration will be promoted in the coming time.

Therefore, in order to meet practical needs and ensure synchronization among legal regulations, especially the regulations on non-cash payment, the Draft Law has removed the threshold of 20 million Viet Nam dong or more and recognized non-cash payment documents to determine deductible expenses. Specifically, the Draft Law stipulates the conditions for invoices as follows: *"Expenses with sufficient invoices and documents (including non-cash payment documents), except for special cases as prescribed by the Government"*.

Amending and supplementing regulations on non-deductible expenses related to loan interest rates

Under point e, clause 2, Article 9 of the applicable Law on CIT, non-deductible expenses when determining taxable income include *"the payment of interests on production and business loans from entities other than credit institutions or economic organizations in excess of 150% of the basic interest rate announced by the State Bank of Viet Nam at the time of loan"*. The above regulation is promulgated on the basis of Article 476 of the Civil Code 2005, specifically: *"The loan interest rate shall be agreed upon by the parties but must not exceed 150% of the basic interest rate announced by the State Bank for the corresponding type of loan"*.

However, this provision of the Civil Code 2005 has been replaced by Article 468 of the Civil Code 2015 that: *"The loan interest rate is agreed upon by the parties. In the case that the parties have an agreement on the interest rate, the agreed interest rate must not exceed 20% per year of the loan amount unless otherwise provided for by other relevant laws"*. Therefore, the Draft Law has proposed amendments to point i, clause 2, Article 9 as follows: *"[...] The payment of interests on production and business loans from entities other than credit institutions or economic organizations in excess of 20% per year of the loan amount [...]"* to align with the provisions of the Civil Code 2015.

Supplementing regulations on CIT rates applicable to small and micro enterprises

Clause 1, Article 10 of the Law on Support for Small and Medium-sized Enterprises stipulates that *"Small*

and medium-sized enterprises may apply the CIT rate lower than the common tax rate applicable to enterprises for a limited period of time in accordance with the law on CIT". Under the applicable Law on CIT, medium, small, and micro enterprises are not included among those entitled to the preferential CIT rate lower than the common tax rate of 20%. Meanwhile, statistics show that the number of medium, small, and micro enterprises accounts for nearly 97% of the total number of enterprises in Viet Nam. Therefore, the Draft Law proposes regulations on CIT rates applicable to small and micro enterprises in order to support such enterprises, creating conditions for accumulating capital to develop production and business and promptly increase the scale of enterprises.

Specifically, the additional regulation on CIT rates applicable to small and micro enterprises is specified in clause 2, Article 10 of the Draft Law as follows: *"Corporate income tax rates for enterprises in the group of small and micro enterprises: **(a)** The tax rate of 15% applies to enterprises with total annual revenue of no more than 3 billion Viet Nam dong; **(b)** The tax rate of 17% applies to enterprises with total annual revenue from over 3 billion Viet Nam dong to no more than 50 billion Viet Nam dong; **(c)** The revenue used as the basis for determining the enterprise's eligibility for the tax rate of 17% and 15% in this clause is the total revenue of the preceding year. In the case of newly established enterprises, the total revenue as the basis for tax rate application shall be specified by the Government; **(d)** The tax rates of 15% and 17% specified in this clause do not apply to enterprises being subsidiaries or companies with associated and the enterprise in such associated relation does not meet the conditions for application of tax rates specified in this clause."*

In general, the provisions of the Draft Law are amended, supplemented, and improved in the direction of transparency, and ease of implementation, ensuring synchronization with the relevant legal system and in line with practical requirements, contributing to ensuring the interests and creating favorable conditions for businesses. The Ministry of Finance now continues to gather comments from domestic and international agencies, organizations, and individuals to complete the contents of the Draft Law before submission to the National Assembly for approval. Enterprises should update and study the amended and supplemented CIT policies in the Draft Law and follow up the drafting process to promptly apply new regulations in production and business activities after the Law on CIT (amended) is officially promulgated.