

THE DRAFT LAW ON PERSONAL INCOME TAX: GRADUALLY FACILITATING TAXPAYERS, ENHANCING STATE ADMINISTRATION EFFICIENCY

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After nearly two decades of implementation, the Law on Personal Income Tax 2007 and its subsequent amendments and supplements have promoted their significant role but also revealed shortcomings in the context of socio-economic developments. Currently, the Law on Personal Income Tax (**the Draft Law**) is being drafted by competent authorities and is being sought for public consultation, with the aim of addressing existing limitations and improving the legal framework governing personal income tax. In this Legal Newsletter, NHQuang&Associates will analyze certain new provisions of the Draft Law that may potentially affect individual taxpayers:

Firstly, the amendment and supplementation of taxable incomes, typically:

- Regarding incomes from business activities, the Draft Law supplements (i) incomes from activities of agency, brokerage, and business cooperation with organizations and (ii) incomes from e-commerce and digital platform-based business activities. In addition, all incomes from business activities shall exclude the incomes of households and individuals engaged in production or business with revenue of VND 200 million/year or less (currently VND 100 million). Accordingly, the Government may adjust this revenue level to suit price fluctuations and socio-economic conditions.
- As for incomes from salaries and wages, the Draft Law supplements (i) remuneration, monetary or non-monetary benefits in any form, and (ii) other incomes to ensure the inclusivity of this provision.
- The Draft Law also adds a number of other taxable incomes such as: (i) Incomes from transfer of the Vietnamese national internet domain name “.vn”; (ii) Incomes from transfer of emission reduction certificates, carbon credits, green bonds;

(iii) Incomes from transfer of license plates acquired through auction (along with the vehicles that such license plates are attached to); (iv) Incomes from transfer of digital assets (virtual assets, encrypted assets); and (v) Incomes from the right to use, own, and transfer other assets as prescribed by the Government.

The addition of the foregoing taxable incomes aims to enhance the efficiency of State administration in the era of promoting technological development, environmental protection and business cooperation, especially business activities and transfers related to digital platforms.

Secondly, the amendment of the regulations on family deduction for individual taxpayers and dependents

Family deduction is the amount deducted from the taxable income of taxpayers who are resident individuals before calculating personal income tax applied on their salaries and wages. Under the applicable law on personal income tax, the deduction for taxpayers themselves is VND 11 million/month (equivalent to VND 132 million/year) and for each dependent is VND 4.4 million/month. However, the Draft Law removes these fixed deduction amounts and empowers the Government to determine appropriate deduction levels in line with prevailing socio-economic conditions from time to time.

According to our review, the Ministry of Finance is currently seeking public comments on the draft Resolution on adjusting the family deduction level of personal income tax, which sets forth two options:

- *Option 1:* Adjusting the family deduction level according to the consumer price index (CPI) growth

rate, specifically: The deduction level for taxpayers shall be raised to VND 13.3 million/month, the deduction level for each dependent shall be VND 5.3 million/month.

- *Option 2:* Adjusting the family deduction level according to the growth rate of average income per capita and GDP per capita, specifically: Deduction of VND 15.5 million/month for taxpayers themselves and VND 6.2 million/month for each dependent.

It can be seen that adjusting the family deduction level under Option 2 will provide taxpayers with a greater reduction in tax liability. However, regardless of which option is applied, the above amendments to the family deduction level aim to create more favorable conditions for taxpayers, improve living standards, stimulate economic growth, and potentially increase state budget revenue in the long term.

Thirdly, the adjustment of the Personal Income Tax Schedule from 7 to 5 brackets

Another notable new point of the Draft Law is the proposal to reduce the Personal Income Tax Schedule from 7 brackets to 5 brackets. The Law on Personal Income Tax 2007 applies the Personal Income Tax Schedule with 7 tax brackets, namely: 5%, 10%, 15%, 20%, 25%, 30% and 35%. However, in practice, the division of the Tax Schedule into many levels with narrow gaps can easily lead to a jump in tax brackets, leading to a higher tax amount on individuals. To address this issue, the Draft Law proposes two options, both of which with 5 brackets, specifically:

- *Option 1:* Applying the tax rates of 5%, 15%, 25%, 30%, 35% to the corresponding taxed income levels per month: up to VND 10 million, over VND 10-30 million, over VND 30-50 million, over VND 50-80 million and over VND 80 million.
- *Option 2:* Maintaining the same tax rates as Option 1 but widening the income gap in each tax bracket. The taxed income per month is divided as follows: up to VND 10 million, over VND 10-30 million, over VND 30-60 million, over VND 60-100 million and over VND 100 million.

Currently, the above two options remain under discussion and public consultation. However, Option 2 is considered more beneficial, particularly for higher-income taxpayers. For example, a taxpayer with a monthly taxed income of VND 55 million is subject to the tax rate of 30% according to the Law on Personal Income Tax 2007 or Option 1 of the Draft Law. However, if Option 2 of the Draft Law is adopted, this taxpayer will only have to apply the tax rate of 25%, corresponding to the third bracket.

Fourthly, the amendment of the regulations on personal income tax for real estate transfer

Regarding the time of determining taxable/taxed incomes, pursuant to the Law on Personal Income Tax 2007, taxable income from real estate transfer is determined at *"the time when the transfer contract takes effect"*. In practice, difficulties have arisen in cases where the real estate transferee is authorized by the transferor to pay tax, tax obligation is only determined by state agencies when the transferee has completed the procedures for obtaining the certificate of ownership/use of real estate. To resolve this problem, the Draft Law supplements *"the time of registration of the right to use, to own real estate"* as one of the two points in time for determining taxed income for incomes from real estate transfer.

In addition, it is proposed in the Draft Law that personal income tax on incomes from real estate transfer of resident individuals shall be equal to taxed income multiplied by the tax rate of **20%** for each transfer. In which, taxed income from real estate transfer is defined as the selling price minus the purchase price and reasonable expenses related to the generation of incomes from real estate transfer.

In the case that *the purchase price and expenses related to the real estate transfer cannot be determined*, personal income tax is determined by multiplying the selling price by the following tax rate:

- For real estate held for less than 2 years: 10%;
- For real estate held for 2 years to less than 5 years: 6%;
- For real estate held for 5 years to less than 10 years: 4%;
- For real estate held for 10 years or more and real estate acquired by inheritance: 2%

The real estate holding period shall be calculated from the time the individual obtains the real estate ownership or use rights until the time of transfer.

It can be seen that the above amendments have met the requirements of Resolution 06/NQ-TW, Resolution 18/NQ-TW and Resolution 62/2022/QH15 in 2022 in researching and improving tax policies in order to strengthen administration, prevent tax losses, but still ensure the legitimate rights and interests of individuals and businesses in the real estate market and avoid real estate speculation.

In general, the Draft Law not only focuses on protecting the legitimate rights and interests of taxpayers, but also enhances the effectiveness of State administration in this field. The Law on Personal Income Tax will soon be promulgated in the future; therefore, organizations and individuals should proactively research and update the provisions of the Draft Law for prompt access to any legal changes.