

# SOME NEW POINTS ON TAX OBLIGATIONS WHEN SETTING UP AND USING ENTERPRISES' SCIENCE AND TECHNOLOGY DEVELOPMENT FUND

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On November 7, 2022, the Ministry of Finance issued Circular 67/2022/TT-BTC providing guidelines for tax obligations when enterprises set up and use their Science and Technology Development Funds (**Circular 67**). Circular 67 amends, supplements, and annuls a number of provisions in Joint Circular 12/2016/TTLT-BKHCN-BTC providing guidelines for the allocation and management of the science and technology development fund in enterprises (**Joint Circular 12**). Circular 67 shall take effect from December 23, 2022 and set forth a number of new points compared to Joint Circular 12 as follows:

*Firstly*, Circular 67 gathers a number of provisions scattered in Joint Circular 12 into a separate clause on principles of using the Science and Technology Development Fund (**Fund**) with the following outstanding contents:

- The Fund shall be reserved only for enterprises' investments in research and development of science and technology and the expenditures permitted from the Fund in accordance with the law;
- Expenditures from the Fund must be fully evidenced by invoices, receipts as per regulations. For the expenditures from the Fund without evidence as prescribed, it is required to fulfill the obligation of payment to the state budget in accordance with Clause 1 Article 4 Circular 67;
- The use of the Fund shall be subject to the first-in first-out principle.

*Secondly*, Circular 67 amends and supplements some contents related to the determination of tax obligations when enterprises misuse, unuse or underuse 70% of the annual Fund contribution, specifically:

- Giving specific instructions to determine the commencement of the 5-year term for the case

of receiving Fund transfer to determine tax obligation when an enterprise unuses or underuses 70% of the annual Fund contribution. Accordingly, this term commences from the corporate income tax (**CIT**) period in which the enterprise receives the Fund transfer;

- Amending the duration in which the interest on the recovered CIT amount imposed on the misused amount of Fund shall be calculated continuously from the day following the Fund contribution date to the day preceding the date on which the recovered tax amount is remitted into the state budget. Previously, under Joint Circular 12, the interest is imposed from occurrence of the violation until the date of payment of the financial obligation to the state budget;
- Supplementing cases accounted as expenditures from the Fund including: the amount paid to the National Science and Technology Development Fund or the Science and Technology Development Fund of the governing ministry, province and city (if any) in accordance with the regulations of the Ministry of Science and Technology;
- Supplementing the provisions that at the time of receiving Fund transfer, if the transferring enterprise is enjoying CIT incentives, the recovered CIT amount will be determined according to the CIT incentives of the transferring enterprise at the time of transfer.

*Thirdly*, Circular 67 supplements the content on management of assets formed from the Fund, typically:

- Expanding the cases where fixed assets formed from the Fund must be documented for supervision and management in accordance with the law and the depreciation of fixed assets must not be included in tax-deductible expenses

when determining taxable incomes subject to CIT. Specifically, Circular 67 recognizes the case of purchasing machines and equipment for technological innovation, directly serving production and business activities of enterprises in 2 years (in 2022 and 2023) based on the National Assembly's fiscal and monetary policies for supporting the 2022 socio-economic recovery and development program.

- Permitting and guiding the management of assets in the cases where fixed assets are used simultaneously for scientific and technological research as well as production and business activities of enterprises. Specifically, if the fixed assets formed from the Fund have not yet been depreciated fully, are used simultaneously for scientific and technological research as well as production and business activities of an enterprise, the enterprise shall continue the supervision and management under the Ministry of Finance's regulations on management, use and depreciation of fixed assets and is not subject to account fixed asset depreciation into tax-deductible expenses when determining taxable incomes subject to CIT.

## **COMMENTS AND RECOMMENDATIONS**

Circular 67 is promulgated with the aim to remove difficulties and create more favorable conditions for enterprises in fulfilling their tax obligations when setting up and using the Fund, for example, specifying contents related to the determination of tax obligation when enterprises misuse, unuse or underuse 70% of the annual Fund contribution, allowing fixed assets to be used simultaneously for scientific and technological research as well as production and business activities, etc. The provisions of Circular 67 will apply for determination of tax obligations from 2022 CIT period. Enterprises should conduct a thorough study of Circular 67 and related documents in order to set up, manage, and use the Fund in accordance with the provisions of the law.