

SOME NOTES ON THE APPLICATION OF TOP-UP CORPORATE INCOME TAX UNDER GLOBAL ANTI-BASE EROSION RULES

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On November 29, 2023, the National Assembly approved Resolution 107/2023/QH15 on applying top-up corporate income tax (CIT) under Global anti-base erosion rules (**Resolution 107**). The Resolution was issued to implement the Base Erosion and Profit Shifting (**BEPS**) initiative by the Organization for Economic Co-operation and Development (**OECD**), which focuses on a global minimum level of tax to ensure that enterprises investing internationally must pay a minimum rate of 15%. This initiative is intended to prevent enterprises from shifting profits to locations with low tax rates to pay less or no tax. Compared with Vietnamese legal regulations on CIT, the global minimum tax is essentially an amount of top-up CIT in cases where the tax rate is lower than the minimum rate proposed by the OECD for global application. Resolution 107 takes effect from January 1, 2024, and applies from the fiscal year of 2024 with some notable contents as follows:

First, concerning taxpayers, according to clause 1, Article 2, Resolution 107, the payment of top-up CIT under BEPS will apply to constituent entities being members of multinational enterprise groups that have annual revenue of EUR 750 million or more as stated in the consolidated financial statements of the ultimate parent entity in at least two of the four fiscal years immediately preceding the tested fiscal year, except for some cases, including governmental entities; international organizations; non-profit organizations; pension funds; investment funds which are an ultimate parent entity; real estate investment vehicles which are an ultimate parent entity; organizations with at least 85% of asset value owned directly or indirectly by the above organizations.

Second, concerning tax payment, according to Resolution 107, taxpayers will pay top-up CIT (with top-up tax percentage = minimum rate (15%) - effective tax rate) in the following two cases:

(i) *Paying qualified minimum domestic top-up CIT (QDMTT)* applicable to a constituent entity or collections of constituent entities of multinational enterprises with production and business activities in



Viet Nam during the fiscal year. The deadline for submitting the Declaration form according to Global anti-base erosion rules, Top-up CIT Declaration with an Explanation for differences due to differences between financial accounting standards, and for top-up CIT payment is no later than 12 months after the last day of the fiscal year.

(ii) *Paying the total amount of top-up tax according to Income Inclusion Rules (IIR)* applicable to ultimate parent entities, partially-owned parent entities, and intermediate parent entities in Viet Nam which are a constituent entity according to Article 2, Resolution 107, and own (directly or indirectly) an ownership interest in a low-taxed constituent entity in other countries (according to the global minimum level of tax rules) at any time during the fiscal year. The deadline for submitting the documents similar to circumstance (i) and paying top-up CIT is no later than 18 months after the last day of the fiscal year for the first year that the multinational enterprise is subject to the application scope, and no later than 15 months after the last day of the fiscal year for the following years.

The issuance of Resolution 107 demonstrates Viet Nam's support and proactivity in applying the Global minimum tax rules and developing a mechanism to encourage enterprises to pay top-up tax in Viet Nam. Enterprises are advised to quickly update the regulations of Resolution 107 as well as subsequent instructions from competent authorities for prompt application and compliance.