

Proposed amendments to the draft Law on Corporate Income Tax (amendment)

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This Update is to outline some proposed amendments stated in the draft Law on Corporate Income Tax (amendment)

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On 7 June 2024, the Ministry of Finance issued Official Letter No. 5949/BTC-CST to call for comments on the draft Law on Corporate Income Tax (amendment).

A proposal to develop an amendment to the Law on Corporate Income Tax (CIT) was made in mid-March 2023 and was approved by the Standing Committee of the National Assembly to be included in the law and ordinance development program for 2025. The amendment of the draft Law on CIT (Draft) is expected to be discussed at the 8th Session of the National Assembly which will be held in October 2024 and approved at the 9th Session in May 2025.

The Draft is proposed to be effective as from 1 January 2026.

EY teams would like to update some prominent amendments being proposed in the Draft for reference purposes. It should be noted that as these are proposals only, they may not come into force and could be amended further.

Prominent amendments being proposed in the Draft include:

- ▶ **Taxpayers:** Broaden taxpayers in scope of the law to include:
 - ▶ Foreign enterprises having no permanent establishments in Vietnam that have income arising from the provision of goods and services in the form of e-commerce business or digital business.
 - ▶ Enterprises subject to top-up tax under the Global Anti-Base Erosion rules (following BEPS Pillar 2).
- ▶ **Taxable income:** Clarify that Vietnam taxable income of foreign enterprises is Vietnam-sourced income, regardless of the enterprises' business location.
- ▶ **Foreign tax credits:** Foreign tax credits to be available in the period in which the income taxed overseas is generated, instead of at the time the income is remitted to Vietnam, as per the current regulations.
- ▶ **Tax-exempt income:** Introduce additional types of tax-exempt income, such as income from the transfer of carbon certificates, income from interest on green bonds, and income from the transfer of green bonds for the first time after issuance.
- ▶ **Carryforward and offset of losses:**
 - ▶ The Draft proposes that losses from non-incentivized business activities will not be offset against profits from incentivized ones.
 - ▶ Profits or losses from activities related to exploration, exploitation and processing of mineral resources such as transfers of investment projects in, transfer of the right to participate in investment projects in or transfer of rights related to these activities, shall not be offset against losses or profits of other production and business activities. Losses from these activities will be carried forward in line with the general rules on losses carried forward.
- ▶ **Determination of deductible expenses:** In relation to deductible expenses the Draft proposes
 - ▶ The general provisions determining the deductibility of expenses should not specify an expenditure amount, above which evidence of non-cash payments are required for the expense to be deductible. Instead, the Draft proposes to delegate to the Government to introduce this requirement for specific cases.
 - ▶ To allow input value-added tax that has not been credited and is not eligible for a refund to be deductible in CIT calculations.
- ▶ **Tax rates:**
 - ▶ Amend the tax rates applicable to micro and small enterprises. Specifically, a 15% tax rate is proposed for enterprises with annual revenue for the preceding year not exceeding VND three billion, and 17% for enterprises with total revenue for the preceding year between VND three billion and VND 50 billion. These tax rates are not applicable to enterprises within a group whose annual revenue exceeds these amounts.
 - ▶ Oil and gas prospection, exploration and exploitation activities are currently taxed with a tax rate of 32% to 50%. Under the Draft, the 35% rate is proposed to reduce to 20%.
 - ▶ Exploration, exploitation and processing of precious mineral resource are currently taxed with a tax rate of 32% to 50% and are proposed to be subject to tax at flat rates of 50%, or 40% if the mine has 70% or more of its area located in an encouraged location.
- ▶ **Tax calculation methods:** The Draft proposes to legalize the regulations on taxing foreign enterprises on a deemed method which are currently governed under Circular No. 103/2014/TT-BTC dated 6 August 2014.

One important point is the Draft proposes that foreign enterprises that transfer capital or assets in Vietnam should be taxed based on a deemed method at a 2% CIT rate. The transfer

of capital and assets of foreign enterprises is currently taxed at 20% on net gains on the same principle applicable to local corporate transferors. While not specifically mentioned in the Draft we anticipate this method could also be used to tax an indirect share transfer.

▶ **Tax incentives applicable to expansion investment projects:**

▶ The current regulations stipulate that a qualified expansion investment project (EIP) can elect either to utilize the CIT incentives granted to the existing investment project which is being expanded for the remaining period, or CIT exemption and reduction periods equaling to those applicable to a new qualifying investment project. A qualified EIP is stated as one located in a regulated encouraged sector or region, and satisfying either a specified increase in the value of investment or a specific percentage increase in the fixed assets or a specified improvement in design capacity.

▶ The proposed changes in the Draft are that

▶ The set of criteria is no longer a condition for the election of the incentive schemes but a "must" to claim CIT incentives.

▶ A qualified EIP, by default, should follow the CIT incentives which its existing investment project is claiming, if available. The CIT exemption and reduction period similar to new investment is only available if the incentives of the existing investment project have expired.

▶ **Regulations on top-up tax:** The Draft proposes to incorporate articles to regulate the collection of top-up tax by mirroring the contents of Resolution No. 107/2023/QH15 dated 29 November 2023 of the National Assembly. This is to ensure the synchronization of the legal system.

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