

## SOME PROPOSALS ON TAXATION POLICY

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### Corporate Income Tax

#### 1. Regulation on the outstanding balance of provision for retrenchment allowance:

*Problem:*

The Ministry of Finance has recently promulgated Circular 180/2012/TT-BTC date 24 October 2012 guiding financial treatment on the provision of retrenchment allowance. Under that regulations, in the year 2012, upon the preparation of financial statements, any outstanding balance of the provision for retrenchment allowance (after actual payment during 2012) shall not be carried forward to the following years but shall be recorded as other incomes in 2012, thus this provision will be taxed at current CIT rate of 25%.

This regulation is truly unreasonable because of the following two reasons:

- + Before Circular 180, The Ministry of Finance required all companies to make the provision for retrenchment allowance to assure sufficient source to pay to employees if they lose job or being jobless in accordance with Labor Law. The provision has been made every year since 2003 pursuant to the Circular 82/2003/TT-BTC. To companies, the balance of the provision reflects the obligation of the companies to their employees in accordance with Labor Law, thus, the requirement of reverse the outstanding balance into other income is an unpredictable and inconsistent change of the policy and give rises to unexpected tax duty to companies. In the recession period of the economy, paying a big amount of tax on an “unreal income” causes difficulty for taxpayers, even forces them into borrowing to pay tax because of the cash flow shortage.
- + Regarding companies who had tax exemption previously or still under exemption, when the provision was made, they recorded the provision as deductible expenses when determining the Company’s taxable income for Corporate Income Tax (“CIT”) purpose at incentive tax rate. Thus, if companies are required to record the outstanding balance of the provision as other income subject to 25% CIT, their tax duties shall increase unreasonably. In other words, Government is taxing on an “income” which never exists. This is obviously not in line with the nature of the income tax policy.

*Proposal:*

In conclusion, we propose that Government should consider the continuance of the severance provision to subsequent years until it is used up. In the case Government still require entities to reverse this provision, Ministry of Finance should allow companies to apply the corresponding incentive tax rate of the years the provision amounts were made.

#### 2. Expense for advertising & promotion

*Problem:*

In the dialogue with Government in November 2012, we proposed to the Government to abolish the regulation of capping 10% for advertising and promoting expense. The Deputy Minister of The Ministry of Finance Truong Chi Trung agreed in principle to gradually abolish the cap in accordance with a road map.

In the draft version of the amended CIT Law issued in April 2013, the cap for advertising and promotion is modestly proposed to increase from the current 10% to 15% and the A&P expenses subject to cap do not basically change. So, it can be understood that the road map to abolish the A&P cap will be over the next 10 to 15 years.

We think that maintaining policy on A&P cap prevents and deeply intervenes to enterprise's business since advertisement; promotion and marketing are vital activities of the business in the era of information. If this policy is considered as a method to protect domestic entities, it should be reconsidered. The policy, itself, prevents Vietnamese enterprises from developing their brand because every money unit spent in excess of the cap will exert more burden and financial pressure on local companies than it does to the foreign invested companies as the latter has more financial strength.

*Proposal:*

To the aim to create a fair and free business environment, we, once again, earnestly propose to the Government to consider shortening the timeline to abolish the cap for A&P expenses. For the coming amended CIT Law, the cap should be considered to increase to at least 25%.

### **3. Newly invested projects and expanded investment projects**

*Problem*

In the draft amended CIT Law, there are significant changes in tax exemption for newly invested projects and extended investment projects, which is a good signal. We understand that the tax exemption shall be assessed based on new invested projects which is not necessarily accompanied with the establishment of the new legal entities, eliminating unnecessarily administration procedures for companies which carry out new projects in encouraged sectors.

However, the definition of new invested project and an expanded investment project has not been defined clearly. This may lead to the risk that different interpretations of the Law may arise, for instance, the description of a newly invested project should be accompanied with the establishment of the new enterprise. The implementation of the Law, therefore, may not align with the intention of the Law.

*Proposal:*

We recommend that the Government should consider, provide detail guidance on this problem so that tax authorities and enterprise who have the plan to invest more in Vietnam can apply consistently, avoiding the different understanding and application among licensing authorities, tax authorities and enterprises.