

PROPOSAL TO GOVERNMENT ON TAX ISSUES

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CORPORATE INCOME TAX LAW

1. Tax treatment on other income

Issue: The 2008 CIT Law requires companies to account separately other income and operating income for the purpose of applying tax incentives. Other income is not entitled to incentive rate but subject to standard CIT rate. Prior to 2008, there was no differential tax treatment between other income generated during the tax period and operating income.

Over the last four years of implementing the 2008 CIT Law, the Ministry of Finance issued a number of supplemental guidance, including the recent released Circular 123/2012/TT-BTC on the types of other income required to determine separately which is taxed at 25%. Although the guidance tried to narrow the categories of other income subject to 25% CIT, companies are still faced with difficulty in classifying the correct types of other income entitled to/or not entitled to preferential tax rates. The requirement clearly entails significant and unnecessary administrative burden and risks for companies which are in tax holiday period. By substance, other income generated as by-product of the main operating activity (e.g. interest deposit, disposal of assets, insurance compensation for damaged goods, principal' subsidy, etc.) should not be treated differently because they are not income actively and intentionally earned by companies in pursuing business activities other than those with tax incentives.

Proposal: We propose the Government to consider having consistent tax treatment of other income generated by/ related to business activities which are enjoying tax incentives. This makes the tax calculation at companies much easier and transparent. The treatment is also sensible in view that other income is not a distinct business activity pursued by companies but generated during the course of normal operations, which should not be tax differently.

2. A&P expenses

Issue: A&P cap policy was introduced to aim at supporting Vietnamese companies to compete with foreign invested enterprises in developing their brands. It is viewed that by capping the deductible A&P expenses, FDI companies would reduce their A&P expenditure, allowing local companies to match their foreign counterparts' spending.

Over years, as Vietnam integrates more into the global economy and aligns its policy with international practices with an aim to create a transparent and fair business environment, such type of policy is no longer suitable:

- it interferes into the right to do business of companies and distort economic relations between transacting parties
- companies have even greater motivation than the Government to control A&P expenses to achieve maximum profit
- it now becomes a hindrance to big Vietnamese companies to develop their own brands which are able to compete on regional and world markets
- research shows that companies which are in favor of this policy are inefficient state owned companies and small companies, implying that this policy actually support companies which are already not competitive.

The call to change this policy has been raised to the Government for long time but so far, not enough change has taken place. It is appreciated that the Government has made some relax in Cir 130 compared to Cir 134 but overall, it was a set-back as opposed to OL 1766.

Companies, especially foreign investors will watch the Government's move to see how responsive the Government of Vietnam is toward the change of economy and its determination to create a transparent and fair environment for companies to compete and develop. Any further delay in removing the cap will impact the investment attractiveness of Vietnam and the confidence of investors.

Proposal: We urge the Government to consider removing the A&P cap policy totally.

3. Investment Protection

Issue: All FDI companies shall be granted with the Investment Certificate/ Investment License by the licensing authorities (the local People's Committee, the local Industry Zones Authorities or the Ministry of Planning and Investment previously). Some of those companies have received a written confirmation on specific tax incentives which are mentioned in their Investment Certificate before they disburse their capital in the projects in Vietnam. The rate of tax incentives stated in their Investment Certificate is a very important factor for all the investors to parameter the financial benefits and make a decision on investment in Vietnam or other countries.

During the company's operation, however, the tax incentives under its Investment Certificate have been challenged and reduced by the local tax authorities although the conditions for those tax incentives are satisfied. Many foreign investors claimed that the investment protection commitment would not be secured because there appears different opinions from the competent State authorities on the same issue after granting the Investment Certificate to them. A decision from the tax office on tax incentive rate can not replace a decision which was made previously by the licensing authority because, in nature, both a tax office and a licensing authority are the State management agencies of Vietnam and that's not a fault from the company and its owners.

Proposal: We propose the Government to consider and provide a legislative principle that any tax incentive which is already stated under the company's Investment Certificate shall not be changed by any State authority if the conditions for that tax incentive is satisfied.