KPMG

Draft Law amending five tax laws - Significant changes of tax policies

Tax Alert - Tax and Legal

September 2017

The Ministry of Finance has recently submitted a proposal for a Draft Law amending and supplementing five tax laws, including the Laws on Value Added Tax (“VAT”), Corporate Income Tax (“CIT”), Special Consumption Tax (“SCT”), Personal Income Tax (“PIT”) and Natural Resources Tax (“NRT”).

The Government shall consider and escalate the Draft Law to the National Assembly for their consideration. Where ratified, this Amendment Law shall come into effect on 1 January 2019.

With regard to the aforesaid Draft Law, we observe some notable trends of the legislation changes as follows:

— For the two main indirect taxes, i.e. VAT and SCT, the taxable subjects would be expanded and the tax rates would be increased.

— For the two main direct taxes, i.e. CIT and PIT, the tax rates are intended to be lower.

— The domestic automotive industry is entitled to significant tax incentives. Though most products of the automotive industry are subject to SCT, there has been an exceptional clause for this industry to enjoy CIT incentives (if qualifying the conditions), and the value of domestically produced components and spare part used for passenger vehicles of less than 9 seat is deductible from the taxable price for SCT calculation purposes.

— The Draft Law highlights and clearly stipulates on related parties transactions.

Some notable points of the Draft Law are as follows:

1. Definition of Small and Medium-sized Enterprises

— The standard VAT rate is proposed to increase from 10% to 12%; meanwhile the VAT rate of 5% would be replaced by 6%.

— Subjects eligible for VAT exemtpion would be narrowed by reclassifying fertiliser and machinery and equipment for agricultural production, offshore fishing boats and land use right transfer to be subject to standard VAT rate at 12%; exported products processed from natural resources and minerals of which total value plus energy cost accounts for 51% of the cost price of the product or more would be subject to 0% VAT rate (i.e. subsequently be entitled to a VAT refund where available).

— Subjects eligible for 6% VAT would be narrowed. Accordingly, performance of culture, sport, film, educational equipment, and medical equipment (with exception for some cases) shall be subject to standard VAT at 12% instead of 6%.

— The non-cash payment requirement for VAT credit would be tightened and cut down from VND20 million to VND10 million for each transaction.

— A VAT refund is open to (i) taxpayers manufacturing goods or providing services subject to 6% VAT and having the accumulated input VAT within 12 consecutive months or 4 consecutive quarters, and (ii) exported products processed from natural resources and minerals of which total value plus energy cost accounts for 51% of the cost price of the product or more would be subject to 0% VAT rate.

2. Special Consumption Tax

— Soft drinks with the exception of fruit juice, natural vegetable drinks, milk, and milk products shall be subject to SCT at 10%.

— Cigarettes and cigars shall be subject to two (02) types of SCT, including the deemed SCT rate (i.e. 75%, which would increase by 5% compared to the current rate) and the deemed SCT amount (i.e. 1,000 dong per packet of 20 cigarettes; and at 1,500 dong per cigar).

— For passenger vehicles of 9 or less seats, the SST taxable price excludes the value of components or spare parts domestically produced.

— The Vietnamese tax authorities shall reserve the right to impose a deemed taxable price for SCT-liable goods and services transacted between related parties based on the percentage of the average price at which the dependent business establishments purchase directly from a manufacturer or importer.

3. Corporate Income Tax

(i). CIT deductibility:

- The threshold of non-cash requirement for CIT deductiblity has been narrowed from VND20 million to VND10 million.
- Input VAT which has not been fully credited for not satisfying the refund conditions shall be deductible for CIT calculation purposes.
- Introduce the thin capitalisation rule, accordingly, the interest expenses shall only be deductible within a specific cap of the equity over debt ratio. In particular, the ratio of 5:1 shall be applied to the manufacturing industry, 12:1 shall be applied to the banking industry and 4:1 shall be applied to other industries.

(ii). With regard to loss utilisation, taxpayers are allowed to offset gain from project transfer, transfer the right of project participation, and real estate transfer against the loss from other non-incentive business activities.

(iii). With regard to the CIT incentive rates:

- Automotive production projects shall be subject to CIT incentive rates at 10% and 15% if qualifying the incentive conditions.
- The CIT incentive rate of 10% within 15 years:
  - Shall not be applied to taxpayers located in economic zones which are in geographical areas with favourable socio-economic conditions as prescribed by law; and
  - Shall be applied to taxpayers providing a number of important software services and manufacturing digital information content products for which development needs to be prioritized in accordance with Government regulations.
- The CIT rate of 15% shall be applied to taxpayers generating annual revenue of less than VND3 billion.
- The CIT rate of 17% shall be applied to taxpayers generating annual revenue between
- VND3 billion to VND50 billion and having an annual average number of 200 employees participating in social insurance.
- The CIT rate of 17% and 15% however would not apply to taxpayers being a company organised in the parent company-subsidiary model in which the parent company holds 25% or more equity of the subsidiary.

4. Foreign Contractor Tax

- The CIT element of FCT has been officially stipualted under Law and the deemed method is the sole declaration method.
- There is no significant change in the tax rates, with exception to the CIT rate of 0.5% applied to on-the-spot export (1% currently).
- The provision of capital assignment subject to 1% CIT indicates the intention of the tax authorities to focus on indirect assignment.

5. Personal Income Tax

- Income from capital assignment (including securities transfer) shall be subject to PIT, disregarding the residency status. Particularly, 1% shall be imposed on the sales proceeds for capital assignment and 0.1% shall be imposed on the sales proceeds for securities transfer .
- The number of progressive tax brackets for employment income has decreased from 7 to 5 brackets due to the removal of the first bracket (i.e. from VND5 million to VND10 million) and the third bracket (i.e. from VND10 million to VND18 million). With the exception of the income level of over VND80 million per month, the tax rates of other income levels have been reduced by between 2% and 10%.
- Expand the taxable income from royalties including transfer of use rights to, internet resources as prescribed in the Law on Telecommunications.

The above Draft Law is expected to take effect on 1 January 2019 when ratified, with the exception of the provision of SCT on cigarettes, which is expected to take effect on 1 January 2020.

Contact us

KPMG Tax and Advisory Limited

Warrick Cleine
Chairman & CEO
Vietnam and Cambodia
Tax Managing Partner

Hanoi

Do Thi Thu Ha, Senior Partner
Hoang Thuy Duong, Partner
Le Thi Kieu Nga, Partner
Nguyen Thu Huong, Partner
Nguyen Ngoc Thai, Director
Nguyen Hai Ha, Director
Pham Thi Quynh Ngoc, Director
Ho Dang Thanh Huyen, Director
Nguyen Huong Giang, Director
Nguyen Manh Cuong, Director
Tran Thi Thuy Ha, Director
Taninaka Yasuhisa, Japanese Desk

46th Floor, Keangnam Landmark 72
E6 Pham Hung Road, Me Tri Ward
South Tu Liem District, Hanoi

T: +84 (24) 3946 1600
F: +84 (24) 3946 1601
E: kpmghanoi@kpmg.com.vn

Ho Chi Minh City

Nguyen Cong Ai, Partner
Richard Stapley-Oh, Partner
Ninh Van Hien, Partner
Ta Hong Thai, Partner
Ho Thi Bich Hanh, Partner
Huynh Ngoc Nhan, Partner
Nguyen Thanh Hoa, Director
Nguyen Thanh Tam, Director
Joost van Vliet, Director
Tran Duy Binh, Director
Bui Thi Thanh Ngoc, Director
Michal Jacob, Director
Watari Takashi, Japanese Desk

10th Floor, Sun Wah Tower
115 Nguyen Hue Street,
Ben Nghe Ward, District 1,
Ho Chi Minh City, Vietnam

T: +84 (28) 3821 9266
F: +84 (28) 3821 9267
E: kpmghcmc@kpmg.com.vn

Follow us on:

kpmg.com.vn