

**DRAFT** (affixed to OL  
16692/BTC-CST)

**LAW PROVIDING PARTIAL AMENDMENT  
OF THE LAW ON CORPORATE INCOME TAX**

Pursuant to the 1992 Constitution of the Socialist Republic of Vietnam, which was revised under Resolution No. 51/2001/QH10, Dec. 25, 2001, of the National Assembly;

This Law provides partial amendments and supplements of the Law on Corporate income tax No. 14/2008/QH12, dated June 3, 2008.

**Article 1. Specific provisions of the Law on Corporate income tax shall be revised as follows:**

**1. Changes to Article 3.2:**

"2. Other income encompasses income from assignment of capital and assignment of capital contributing rights; income from transfer of real property, transfer of investment projects, transfer of rights to engage in investment projects, transfer of mineral exploration, production and processing rights; income from titles and rights to use properties; income from transfer, lease and liquidation of properties; income from interest of deposits, loans and sales of foreign currencies; ~~reversed provisions~~; deleted non-performing loans that are recovered; payables for which the debtors are unknown; missed out income from business activities from previous years and others, including income generated outside Vietnam".

**2. Supplement clause 8, 9 and 10 of Article 4:**

"8. Income from transfer of Certified Emission Reductions (CERs) of entities holding Certified Emission Reductions rights;

9. Income from official development lending and export lending activities of the Bank for Development of Vietnam; income from lending to the poor and other welfare beneficiaries of the Social Policy Bank; income from lending services, by the roles and mandates, of local development funds;

10. The portion of income of private higher education institutions retained for investment and development of higher education infrastructure, educational activities, development of physical facilities, procurement, training and upgrade of the faculty, staff, managerial officers, studying and daily living of learners, or for philanthropic purposes and completion of the social responsibility of the institutions, in conformity with the provisions of Article 66, the Law on Higher Education of 2012".

**3. Changes to Article 7.3:**

"3. Income from transfer of real property, transfer of investment projects, transfer of rights to engage in investment projects, transfer of mineral exploration, production and processing rights shall be isolated for tax declaration, where earnings and losses of these activities may be offset with each other; in case the offset cannot cover the losses, the subject entity may further offset with earnings from business operations within the tax cycle.

The Government provides details and implementing guidelines for this Article".

**4. Changes to Article 9:**

**"Article 9. Expenses allowed and not allowed to be left out for calculation of taxable income**

1. Except for the expense items specified in clause 2 of this Article, all expenses may be left out if the following requirements are met:

a) Actual costs incurred pertaining to an entity's business activities;

b) Expenditure backed by adequate invoices or vouchers as required by the prevailing law. In case of invoices for one-off purchase of products and services that are subject to non-cash payment schemes under the existing law, evidence of non-cash payment is required, unless the government rules otherwise.

2. Expenses not allowed to be left out for calculation of taxable income include:

- a) Expense items that fail to meet the requirements of clause 1 of this Article, except losses caused by acts of God, diseases and other unindemnified force majeure events;
  - b) Penalties for civil offences;
  - c) Expenses that are offset with other funds;
  - d) Overheads allocated by an offshore business to its residential establishments in Vietnam that are in excess of the amount defined by the allocating methods specified in the laws of Vietnam;
  - dd) Expenditure in excess of the current regulatory rules on provisioning;
  - e) ~~Spending on input materials, fuels, energy and commodity that exceeds consumption norms that the subject entity defined and informed tax authorities, and the actual ex-work costs;~~
  - e g) Payment of loan interest for operational capital by any entities other than depository institutions or business entities that exceeds 150% of the base rate released by the State Bank of Vietnam;
  - g h) Determination of depreciation for fixed assets in breach of the law;
  - h i) Advanced expenses determined in breach of the law;
  - i k) Salary and wages of owners of private businesses; remuneration of founders of a business who are not directly involved in running the business; salary, wages and other payments planned for employees that are not paid or without supporting invoices or vouchers as required by law;
  - k l) Payment of loan interests for capital amounts equal to the missing registered capital;
  - l m) Deducted input value added tax, value added tax paid through the deducting mode, and corporate income tax;
  - m n) Expenses for advertisement, marketing, promotion and commission; expenses for reception, events and conferences; expenses supporting marketing activities, cost subsidy, ~~transactional discounting; expenses for give-away newspapers of the media~~ directly attributed to business operations that exceed ~~15%~~ 40% of the total deductible expenditure; ~~and in the case of start-up businesses, the expenses in excess of 15% of the total costs in the first three years of their existence.~~ The total amount of deductible expenses does not encompass the expense items specified in this clause. In case of trade activities, the total expenses does not include the purchase cost of the product on sale.
  - n o) Support funds, except for support to education, health care, recovery after disasters ~~and~~ building charity houses, empathy houses and unity houses for the poor in line with applicable laws and except support funds under the government's programs targeting areas of extremely marginalized socio-economic conditions.
  - o) Payments of loan interests for loan amounts that exceed four times the owner's equity, and in particularly for depository institutions and banks, not in excess of ten times the owner's equity. In case of specific sectors, areas and businesses where regulatory provisions exist on the minimum ratio of owner's equity over the total investment costs, such provisions shall apply.
  - p) Voluntary contribution to pension funds, other funds of social security nature, and voluntary purchase of pension insurance for employees in excess of statutory levels;
  - q) Expenditure for business purposes in: banking, insurance, lottery, securities and other special lines of business activities as defined by the Ministry of Finance.
3. Expenses in foreign exchange that are deductible for calculation of taxable income must be converted to Vietnamese dong at the mean trading exchange rate in the interbank foreign exchange market released by the State Bank of Vietnam at the time such foreign exchange expenses incur.

The Government provides details and implementing guidelines for this Article”.

## **5. Changes to Article 10:**

### **“Article 10. Tax rate**

1. The corporate income tax rate is **23%** ~~25%~~, except for cases specified in ~~clause 2 of this Article and Article 13 clause 5 and 6, Article 1 of this Law.~~

Small and medium-sized enterprises employing less than 200 full-time workers and having annual sales not more than VND20 billion are subject to a tax rate of 20%.

The staff size and sales amount based on which an enterprise is defined as small and medium-sized to be subject to the 20% tax rate in this clause shall be the average staff size and total

sales amount of two consecutive previous years, and shall apply without change for a 2-year period since the year of application.

2. The corporate income tax rates applicable for prospecting, exploration and mining of oil, gas and other rare resources in Vietnam range between 32% and 50%, depending on individual projects and business entities.

The Government provides details and implementing guidelines for this Article”.

#### **6. Changes to Article 13:**

##### **“Article 13. Tax rate preferential treatment**

1. Start-up businesses investing created from a project in areas of extremely difficult socioeconomic conditions, economic zones, high-tech parks, and start-up businesses investing created from a project in high-tech areas, academic research, technology development, development of the government’s critical infrastructure, and production of software are subject to a tax rate of 10% in fifteen years.

2. Businesses engaged in socializing activities in areas of education and training, vocational training, health care, culture, sports and environment (collectively called socializing activities); businesses engaged in social housing projects for sales and lease purchase in case of entities defined in Article 53, Housing Law of 2005, media institutions engaged in printed press activities (including media-based advertisement) under the Press Law, and publishing houses engaged in publishing activities under the Publishing Law are subject to a tax rate of 10% on income from these activities.

The typology, size and standards of businesses engaged in socializing activities defined in this clause shall be determined by the Prime Minister.

3. Start-up businesses investing created from a project in areas of difficult socio-economic conditions are subject to a tax rate of 20% within ten years.

4. Farming service cooperatives, people’s credit funds, cooperative-type credit institutions and microfinance institutions are subject to a tax rate of 20%.

5. In case of projects in special need of investment attraction of large scale and high technology, the preferential tax rates period may be extended, but no longer than fifteen years ~~the period specified in clause 1 of this Article.~~

6. The preferential tax rates period specified in this Article shall start from the first year the subject entity generates income.

The Government provides details and implementing guidelines for this Article”.

#### **7. Changes to Article 14:**

##### **“Article 14. Preferential treatment for tax holiday period**

1. Start-up businesses investing created from a project in areas of extremely difficult socioeconomic conditions, economic zones, high-tech parks; start-up businesses investing created from a project in high-tech areas, academic research and technology development, development of the government’s critical infrastructure, and production of software; start-up businesses operating in the field of socialization ~~education — training, vocational training, health care, culture, sports and environment~~ are subject to tax exemption for no longer than four years and a reduction of 50% of the payable tax for the following nine years at maximum.

2. Start-up businesses investing created from a project in areas of difficult socio-economic conditions are subject to tax exemption for no longer than two years and a reduction of 50% of the payable tax for no longer than the following four years.

3. The tax holiday period applicable for start-up businesses as specified in clauses 1 and 2 of this Article shall start from the first year taxable income is generated. In case of businesses that are unable to generate taxable income within the first three years of existence from the first year sales are recorded, the tax holiday period shall start from the fourth year.

4. Operational businesses investing in expansion and installation of new production lines, expansion of business scale, and renovation of technology that fall under corporate income tax incentive sectors and locations under this Law are subject to tax break for the added income from such investment activities. The tax holiday period specified in this clause equals the tax holiday period applicable to start-up businesses located in the same corporate income tax incentive sectors and areas.

Business expansion subject to tax break as specified in this clause must meet the requirements on the size of asset-based invested capital as defined by the Government.

The added income from business expansion subject to corporate income tax incentive specified in this clause shall be maintained on separate accounts.

The tax holiday period specified in this clause shall start from the year of investment completion and income generating operation. In case no taxable income is generated within the first three years of operation since the first year sales are recorded, the tax holiday period shall start from the fourth year.

In case of operational businesses undertaking scheduled business expansion as registered in the application for investment certification or the maiden investment certificate, for the income from business expansion, the subject entity may choose the incentives specified in this clause or incentives (tax rate, tax holiday period, tax reduction) for the remaining time of the initial project (if any).

Tax incentives specified in this clause are not applicable to: business expansion defined in Article 1.6, item 2 of this Law and other business expansion by means of merger and acquisition of other operational businesses or investment projects.

The Government provides details and implementing guidelines for this Article”.

#### **8. Changes to Article 16.2:**

“2. Businesses incurring losses from transfer of real property, transfer of investment projects, transfer of rights to engage in investment projects, transfer of mineral exploration, production and processing rights may only carry over the losses to the taxable income of these activities after completing offsets as specified in Article 1.3 of this Law transfer of real property”.

#### **9. Changes to Article 18:**

“1. Corporate income tax incentives defined in clauses 6, 7, and 8, Article 1 of this Law and Articles 13, 14, 15, 16 and 17 of the Law on CIT No. 14/2008/QH12 are applicable to businesses adopting the declaration-based approach for accounting, invoicing, voucher management and tax paying.

Corporate income tax incentives defined in clauses 6 and 7, Article 1 of this Law are not applicable to start-up businesses formed by means of division, acquisition, merge, transformation of business types, transfer of ownership, private household businesses and others in line with the government’s regulations.

2. Businesses shall maintain separate accounts for income from tax incentive business operations specified in clauses 6 and 7, Article 1 ~~Articles 13 and 14~~ of this Law from income generated from businesses operations without tax incentives. In case separate accounts cannot be maintained, income from business operations with tax incentives shall be defined based on the proportion of sales amount from business activities with tax incentives to the total sales, and in particular in case of business expansion, the proportion of the value of new fixed assets put in business operation to the total original cost of the fixed assets actually put in business use.

3. The 20% tax rate specified in Article 1.5, item 1 of this Law and corporate income tax incentives specified in clauses 6 and 7, Article 1 ~~Articles 13 and 14~~ of this Law are not applicable to:

a) Income specified in Article 3.2 of this Law from assignment of capital, assignment of capital contributing rights; income from transfer of real property (except social housing facilities as specified in Article 1.6 of this Law); income from transfer of investment projects, transfer of the right to engage in investment projects, transfer of mineral exploration, production and processing rights; and income generated outside Vietnam;

b) Income from prospecting, exploration and mining of oil and gas, and other rare resources and income from mining activities;

c) Income from service activities that are subject to special sales tax in line with the Law on special consumption tax ~~doing business in reward-based games and wager in compliance with the existing law;~~

d) Other cases as defined by the Government”.

#### **Article 2. Implementing provisions**

1. This Law comes into effect from January 1, 2014. The provision on payment of loan interest at Article 1.4, item o of this Law is in effect from January 1, 2016, and shall apply to credit facilities and loan agreements dated from January 1, 2016.

2. Businesses subject to corporate income tax incentives under normative documents on corporate income tax that are in effect prior to this Law that, by the end of the tax cycle of 2013, are still within their tax incentives period (tax rates, tax holiday periods) shall continue to enjoy such tax incentives for the remaining period in line with the respective regulatory documents. In case the corporate income tax incentives (including preferential tax rates and tax holiday periods) are less than the incentive levels provided in this Law, the tax incentives of this Law shall apply for the remaining periods.

3. Operational businesses conducting business expansion from 2009 to the end of the tax cycle of 2013, or having business expansion prior to 2009 but not receiving the tax incentive treatment for the added income from the business expansion, that meet the criteria for tax incentives specified in this Law shall be subject to the incentives of this Law for the remaining period, starting from January 1, 2014.

4. The Government provides details and implementing guidelines for this Law. Specific types of income generated from restructuring of businesses that are not addressed in this Law shall be referred by the Government to the Executive Committee of the National Assembly for tax break decision making.

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This Law is passed by the National Assembly of the Socialist Republic of Vietnam, XIII term, 4<sup>th</sup> session, on ..... 2013.

**NATIONAL ASSEMBLY CHAIRMAN**

**Nguyễn Sinh Hùng**