

Law No. 32/2013/QH13

Hanoi, June 19, 2013

LAW

ON THE AMENDMENTS TO THE LAW ON ENTERPRISE INCOME TAX

Pursuant to the Constitution of Socialist Republic of Vietnam 1992, amended in the Resolution No. 51/2001/QH10;

The National Assembly promulgates a law on the amendments to the Law on Enterprise income tax No. 14/2008/QH12.

Article 1. The amendments to the Law on Enterprise income tax:

1. Clause 3 of Article 2 is amended as follows:

“3. The permanent establishments of a foreign enterprise are the places through which the foreign enterprise carries out part or the whole business in Vietnam, including:

a) Branches, executive offices, factories, workshops, means of transport, oil fields, gas files, mines or other natural resource extraction sites in Vietnam;

b) Construction sites;

c) Service providing centers, including counseling services via employees or other organizations or individuals;

d) Agents of foreign enterprises;

dd) Representatives in Vietnam that are competent to sign contracts under the name of the foreign enterprise or that are not competent to sign contracts under the name of the enterprise but regularly provide goods or services in Vietnam.”

2. Clause 2 of Article 3 is amended as follows:

“2. Other incomes include incomes from the transfer of capital, the right to capital contribution; incomes from transfer of real estate, project of investment, the right to participate in project of investment, the transfer of the right to explore, extract, and process minerals; incomes from the right to use property and property ownership, including incomes from intellectual property right; incomes from transferring, leasing, and liquidating assets, including valuable papers; incomes from interest on deposit, capital loan, sale of foreign currency; revenues from written off bad debts that are repaid; revenues from debts of unidentified debtors; omitted incomes in previous years, and other incomes, including incomes from business outside Vietnam.”

3. Clause 1 and Clause 4 of Article 4 is amended, Clauses 8, 9, 10, and 11 are added to Article 4 as follows:

“1. incomes from farming, breeding, aquaculture, salt production of cooperatives; incomes of cooperatives from agriculture, forestry, fisheries, and salt production in localities facing socio-economic difficulties or localities facing extreme socio-economic difficulties; incomes of enterprises

from farming, breeding, aquaculture in localities facing extreme socio-economic difficulties; incomes from fisheries.”

“4. Incomes from production and sale of goods and services of enterprises that have at least 30% of the employees are disabled people, detoxified people, suffers of HIV/AIDS, and have at least 20 employees, except for enterprises engaged in finance and real estate business.”

“8. Incomes from the transfer of Certified Emissions Reductions (CERs) of enterprises issued with CERs.

9. Incomes from the performance of tasks of the Vietnam Development Bank, which are assigned by the State, in credit for development and export; incomes from granting credit to the poor and beneficiaries of policies of Vietnam Bank for Social Policies; incomes of state financial funds and other state funds serving non-profit purpose incomes of organizations, of which 100% charter capital is possessed by the State, that are established by the Government to settle bad debts of Vietnamese credit institutions.

10. Undistributed incomes of private organizations, which make investment in education, health, and other fields, that are kept to serve their development in accordance with the laws on education, health, and other fields; the incomes that form the undistributed assets of cooperatives established and operating in accordance with the Law on Cooperatives.

11. Incomes from transfer of technologies that are prioritized to be to organizations and individuals in localities facing extreme socio-economic difficulties.”

4. Clause 3 of Article 7 is amended as follows:

“3. Incomes from transfers of real estate, project of investment, the right to participate in projects of investments, the right to explore, extract, and process minerals must be separated. The loss on transfers of projects of investment (except for mineral exploration and mineral extraction projects), incomes from transfers of the right to participate in projects of investment (except for the mineral exploration and mineral extraction projects), incomes from transfer of real estate shall be offset against the profit in the tax period.”

5. Article 9 is amended as follows:

“Article 9. Deductible and non-deductible expenditures

1. Except for the expenditures mentioned in Clause 2 of this Article, all expenditures are deductible when calculating taxable income if they meet the conditions below:

a) Actual expenditures related to the business of the enterprise; expenditures on National defense and security of enterprise according to law;

b) Expenditures that have sufficient invoices and documents according to law. The invoice for any purchase of goods or services of at least 20 million VND must be enclosed with proof of cashless payment, except for the cases in which proof of cashless payment is not required by law.

2. Non-deductible expenditures when calculating taxable income:

a) The expenditures that fail to meet all conditions in Clause 1 of this Article, except for the loss cause by natural disasters, epidemics, and other force majeure that are not compensated.

b) Fines for administrative violations;

- c) The expenditures that are covered by other budgets;
 - d) The administrative expense allocated by the foreign enterprise to the permanent establishment in Vietnam that exceeds the limit imposed by Vietnam's law.
 - dd) The extra expenditure according to the laws on making provision;
 - e) The expenditure on interest on loans that are not given by credit institutions or economic organizations and exceed 150% of basic interest rates announced by the State bank of Vietnam when the loan is taken.
 - g) Improper depreciation of fixed assets;
 - h) Improper accrued expenses;
 - i) Wages and remunerations of owners of private enterprises; wages of founders that do not participate in business management; wages, remunerations, and amounts payables to the employees that are not actually paid or do not have invoices according to law;
 - k) The expenditures on loan interests corresponding to the charter capital deficit;
 - l) Deducted input VAT, VAT paid using the deduction method, enterprise income tax;
 - m) The expenditure on advertising, marketing, promotion, commissions, receptions, conferences, support for marketing and expenditures directly related to business that exceed 15% of the deductible amount. The total deductible amount does not include the expenditures in this Point; for commercial activities, the total deductible amount does not include the purchase prices of goods;
 - n) Sponsorships, except for sponsorships for education, health, scientific research, disaster recovery, houses of unity, houses of gratitude, houses for beneficiaries of social policies according to law, sponsorships for localities facing extreme socio-economic difficulties according to state programs;
 - o) Voluntary payments to retirement funds or social security funds, payments for voluntary retirement insurance for employees that exceed the limits imposed by law;
 - p) Expenditures on businesses: banking, insurance, lottery, securities, and some other special businesses specified by the Minister of Finance.
3. Expenditures in foreign currency, unless to serve the calculation of taxable incomes that must be converted into VND, according to the average exchange rates on the interbank foreign currency market that are announced by the State bank of Vietnam when the expenditures occur.

The Government shall elaborate and provide guidance on the implementation of this Article.”

6. Article 10 is amended as follows:

“Article 10. Tax rate

1. The enterprise income tax rate is 22%, except for the cases in Clause 2 and Clause 3 of this Article and beneficiaries of tax incentives defined in Article 13 of this Article.

The cases to which the tax rate of 22% in this Clause shall apply the tax rate of 20% from January 01, 2016.

2. Any enterprise of which the total revenue does not exceed 20 billion VND per year are eligible for the tax rate of 20%.

The revenue used as the basis for identifying enterprises eligible for the tax rate of 20% in this Clause is the revenue of the previous year.

3. The rates of enterprise income tax on the exploration and extraction of oil and other rare resources in Vietnam range between 32% and 50% depending on each project and each business establishment.

The Government shall elaborate and provide guidance on the implementation of this Article.”

7. Article 13 is amended as follows:

“Article 13. Tax incentives

1. The tax rate of 10% for 15 years is applicable to:

a) Incomes of enterprises from the execution of new projects of investment in localities facing extreme socio-economic difficulties, economic zones, and hi-tech zones;

b) Incomes of enterprises from the execution of new projects of investment, including: scientific research and technology development; application of high technologies in the list of prioritized high technologies according to the Law on High Technologies; cultivation of high technologies, cultivation of hi-tech enterprises; high-risk investment in the development of high technologies in the list of prioritized high technologies according to the Law on High Technologies; investment in crucial infrastructure of the State; software production; production of composite materials, light building materials, rare materials, renewable energy, clean energy, energy from waste destruction; development of biological technology, and environment protection;

c) Incomes of hi-tech enterprises and agricultural enterprises that apply high technologies according to the Law on High Technologies;

d) Incomes of enterprises from the execution of new projects of investment in production (except for the production of articles subject to special excise duties and mineral extraction projects), which meet one of the two criteria below:

- Any project of which the capital is at least 6,000 billion VND that is released within 3 years from the day on which the Investment certificate is issued, and the total revenue reaches at least 10,000 billion VND within 3 years from the first year in which revenue is earned;

- Any project of which the capital is at least 6,000 billion VND that is released within 3 years from the day on which the Investment certificate is issued, and employ more than 3,000 workers.

2. The tax rate of 10% is applicable to:

a) Incomes of private enterprises from investment in education, vocational training, health, culture, sports, and environment;

b) Incomes of enterprises from the investments in social housing that are for sale, for lease, or for hire purchase according to Article 53 of the Law on Housing;

c) Incomes from press agencies from printing newspapers, including advertisements on printed newspapers according to the Law on Press; incomes of publishers from publishing according to the Law on Publishing;

- d) Incomes of enterprises from planting, cultivating, and protecting forests; from agriculture, forestry, and aquaculture in localities facing socio-economic difficulties; from the production, multiplication, and cross-breeding plants and animals; from the production, extraction, and refinement of salt, except for the production of salt in Clause 1 Article 4 of this Law; from investment in post-harvest preservation of agriculture products, aquaculture products, and food;
- dd) Incomes of cooperatives from agriculture, forestry, fisheries, and salt production that are not in localities facing socio-economic difficulties or localities facing extreme socio-economic difficulties, except for incomes of the cooperatives defined in Clause 1 Article 4 of this Law.

3. The tax rate of 20% for 15 years is applicable to:

- a) Incomes of enterprises from the execution of new projects of investment in localities facing socio-economic difficulties;
- b) Incomes of enterprises from the execution of new projects of investment, including: production of high-grade steel; production of energy-saving products; production of machinery and equipment serving agriculture, forestry, aquaculture, salt production; production of irrigation equipment; production and refinement of feed for livestock, poultry, and aquatic organism; development of traditional trades.

From January 01, 2016, incomes of the enterprises defined in this Clause are eligible for the tax rate of 17%.

4. The tax rate of 20% is applicable to incomes of people's credit funds and microfinance institutions,

From January 01, 2016, incomes of people's credit funds and microfinance institutions are eligible for the tax rate of 17%.

5. For special projects that need to attract a lot of investment and high technologies, the period of preferential tax rates may be extended, but the extension shall not exceed 15 years.

6. The period of preferential tax rates in this Article begins from the first year in which revenue from the new project of investment is earned; for hi-tech enterprises and agricultural enterprises that apply high technologies, this period begins from the day on which the certificate of hi-tech enterprise or certificate of hi-tech agricultural enterprise is issued; for projects of high technology application, this period begins from the day on which the certificate of hi-tech application project is issued.

The Government shall elaborate and provide guidance on the implementation of this Article.”

8. Article 14 is amended as follows:

“Article 14. Preferential duration of tax exemption and tax reduction

- 1. Incomes of enterprises from the execution of new projects of investment provided for in Clause 1 and Point a Clause 2 Article 13 of this Law, incomes of hi-tech enterprises, hi-tech agricultural enterprises are eligible for tax exemption for no more than 4 years, and eligible for 50% reduction in tax for no more than the next 9 years.
- 2. Incomes of enterprises from the execution of new projects of investment provided for in Clause 3 Article 13 of this Law, incomes of enterprises from the execution of new projects of investment in

industrial parks, except for industrial parks in advantaged localities, are eligible for tax exemption for no more than 2 years, and eligible for 50% reduction in tax for no more than the next 4 years.

3. The period of tax exemption and tax reduction applicable to incomes of enterprises from the execution of new projects of investment in Clause 1 and Clause 2 of this Article begins from the first year in which taxable income from projects of investment is earned. If no taxable income is earned in the first three years from the first year in which revenue from the project is earned, the period of tax exemption and tax reduction shall begin from the fourth year. The period of preferential tax rates applicable to hi-tech enterprises and agricultural enterprises that apply high technologies mentioned in Point c Clause 1 Article 13 of this Law begins from the day on which the certificate of hi-tech enterprise or certificate of hi-tech agricultural enterprise is issued.

4. When an enterprise, which has projects of investment in the fields or localities eligible for enterprise income tax incentives according to this Law, expands the production scale, increases the productivity, upgrades production technologies (expansion), it may choose between tax incentives for operating projects for the remaining time (if any) or tax exemption or reduction for the additional incomes from expansion if one of the three criteria in this Clause is satisfied. The period of tax exemption and tax reduction for the additional incomes from expansion in this Clause is equal to the period of tax exemption and tax reduction for new projects of investment in the same field or locality that is eligible for enterprise income tax incentives.

The expansion must satisfy one of the criteria below to be given incentives:

- a) The cost of additional fixed assets reaches at least 20 billion VND when the project of investment is completed and commenced, applicable to expanding investments in the fields eligible for enterprise income tax according to this Law, or at least 10 billion VND, applicable to expanding investments in localities facing socio-economic difficulties or localities facing extreme socio-economic difficulties;
- b) The proportion of cost of additional fixed assets reaches at least 20% of the total cost of fixed assets before investment;
- c) The design production increases by at least 20% of the design production before investment.

When an enterprise invests in expansion in a field or locality eligible for tax incentives according to of this Law but fails to satisfy any criterion above, the tax incentives shall apply to the remaining period of the project (if any).

Where an enterprise is eligible for tax incentives for expansion, the additional income from expansion shall be recorded separately; if it is not able to be recorded separately, the income from expansion shall be determined based on the ration of the cost of new fixed assets to the total cost of fixed assets of the enterprise.

The period of tax exemption and tax reduction in this Clause begins from the year in which the project of investment is finished and its operation is commenced.

The tax incentives in this Clause are not applicable to the extensions on account of merger or acquisition of enterprises or operating projects of investment. The Government shall elaborate and provide guidance on the implementation of this Article.”

9. Clause 3 is added to Article 15 as follows:

“3. Any enterprise that transfers technologies that are prioritized to other organizations and individuals in localities facing socio-economic difficulties are eligible for 50% reduction in enterprise income tax on the income from technology transfers.”

10. Article 16 is amended as follows:

“Article 16. Transferring loss

1. An enterprise may transfer its loss to the next year; this loss is deducted from assessable income. The period of loss transfer must not exceed 5 years from the year succeeding the year in which the loss is incurred.

2. Any enterprise which is still at a loss after offsetting its loss on transfers of real estate, transfers of projects of investment, transfers of the right to participate in project of investment, according to Clause 3 Article 7 of this Law, and any enterprise which makes a loss from transfers of the right to explore and extract minerals may transfer the loss to the next year and offset it against the assessable incomes from such activities. The period of loss transfer shall comply with Clause 1 of this Article.”

11. Clause 1 of Article 17 is amended as follows:

“1. Any enterprise established and operated within Vietnam’s law may use no more than 10% of the annual assessable income to establish its science and technology development fund. Apart from establishing the science and technology development fund, state-owned enterprise must ensure the minimum amount for the fund according to the laws on science and technology.”

12. Article 18 is amended as follows:

“Article 18. Conditions for tax incentives

1. The enterprise income tax incentives provided for in Article 13, 14, 15, 16, and 17 of this law are applicable to the enterprises that follow the regime for accounting and invoicing, and pay tax according to declarations.

Enterprise income tax incentives for new project of investment defined in Article 13 and Article 14 of this Law are not applicable to division, merger, amalgamation, and conversion of enterprises, change of ownership, and other cases according to law.

2. Enterprises must separate the incomes from the operations eligible for tax incentives defined in Article 13 and Article 14 of this Law from the incomes from the operations that are not eligible for tax incentives; if such incomes are not able to be separated, the income from the operations eligible for tax incentives shall be determined based on the ratio of the revenue from the operations eligible for tax incentives to the total revenue of the enterprise.

3. The tax rate of 20% in Clause 2 Article 10 and the tax incentives in Clause 1 and Clause 4 Article 4, Article 13, and Article 14 of this Law are not applicable to:

a) Incomes from transfer of capital, transfers of the right to contribute capital; incomes from the transfers of real estate, except for social housing specified in Article 13 of this Law; incomes from transfers of projects of investment, transfers of the right to participate in projects of investments, transfers of the right to explore and extract minerals; incomes from operations outside Vietnam;

- b) Incomes from the exploration and extraction of petroleum and other rare resources, and incomes from mineral extraction;
 - c) Incomes from services subject to special excise duty according to the Law on Special excise duty;
 - d) Other cases decided by the Government.
4. If an enterprise is eligible to multiple tax incentives for the same income at the same time, it may choose the most advantageous incentive.”

Article 2.

1. This Law takes effect on January 01, 2014, except from Clause 2 of this Article.
2. The regulations on the application of the tax rate of 20% to the enterprises of which the total annual revenue does not reach 20 billion VND in Clause 6 Article 1, and the regulations on the application of the tax rate of 10% to the incomes of enterprises from the social housing in Clause 7 Article 1 of this Law takes effect on July 01, 2013.
3. The enterprises having projects of investment that are still eligible for enterprise income tax incentives after the end of the tax period 2013 (tax rate, tax exemption or reduction duration) according to the legislative documents on enterprise income tax before this Law takes effect are still eligible for such incentives for the remaining time according to such documents. Where the conditions for tax incentives in this Law are satisfied, enterprises may choose between the incentives they are having or the incentives in this Law for the remaining time, applicable to new investments or extension.

By the end of the tax period 2015, enterprises having projects of investment that are eligible for the preferential tax rate of 20% in Clause 3 Article 13 of the Law on Enterprise income tax No. 14/2008/QH12 amended in Clause 4 Article 1 of this Law are eligible for the tax rate of 17% for the remaining time from January 01, 2016.

4. The following regulations on enterprise income tax are annulled:
 - a) Clause 2 Article 7 of the Law on Deposit insurance No. 06/2012/QH13;
 - b) Clause 2 Article 4 of the Law on Health insurance No. 25/2008/QH12;
 - c) Clause 1 of Article 10; Clause 1 of Article 12; Clause 2 of Article 18; Clause 2 of Article 19; Clause 1 and Clause 2 of Article 22; Clause 3 of Article 24 and Clause 2 of Article 28 of the Law on High Technologies No. 21/2008/QH12;
 - d) Clauses 1, 4, 5, 6, 7, and 8 of Article 44, and Article 45 of the Law on Technology transfers No. 80/2006/QH11;
 - dd) Clause 1 of Article 53, Clause 5 of Article 55, and Clause 3 of Article 86 of the Law on Enterprises No. 76/2006/QH11;
 - e) Clause 1 of Article 68 of the Law on Vietnamese guest workers No. 72/2006/QH11;
 - g) Clause 2 Article 6 of the Law on Social insurance No. 71/2006/QH11;
 - h) Clause 3 Article 8 of the Law on Legal Assistance No. 69/2006/QH11;
 - i) Clause 3 Article 66 of the Law on Higher Education No. 08/2012/QH13;

- k) Article 34 of the Law on Disabled people No. 25/2008/QH12;
- l) Clause 4 Article 33 of the Law on Investment No. 59/2005/QH11;
- m) Clause 2 of Article 58, Clause 2 of Article 73, Clause 3 of Article 117, and Clause 3 of Article 125 the Law on Enterprises no, 60/2005/QH11.
5. The Government shall elaborate and provide guidance on the implementation of this Law.
- This Law is passed by the 13th National Assembly of Socialist Republic of Vietnam in the 5th session on June 19, 2013

PRESIDENT OF THE NATIONAL ASSEMBLY

Nguyen Sinh Hung

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