Vietnam tax agenda for 2015

Ho Chi Minh City, Vietnam

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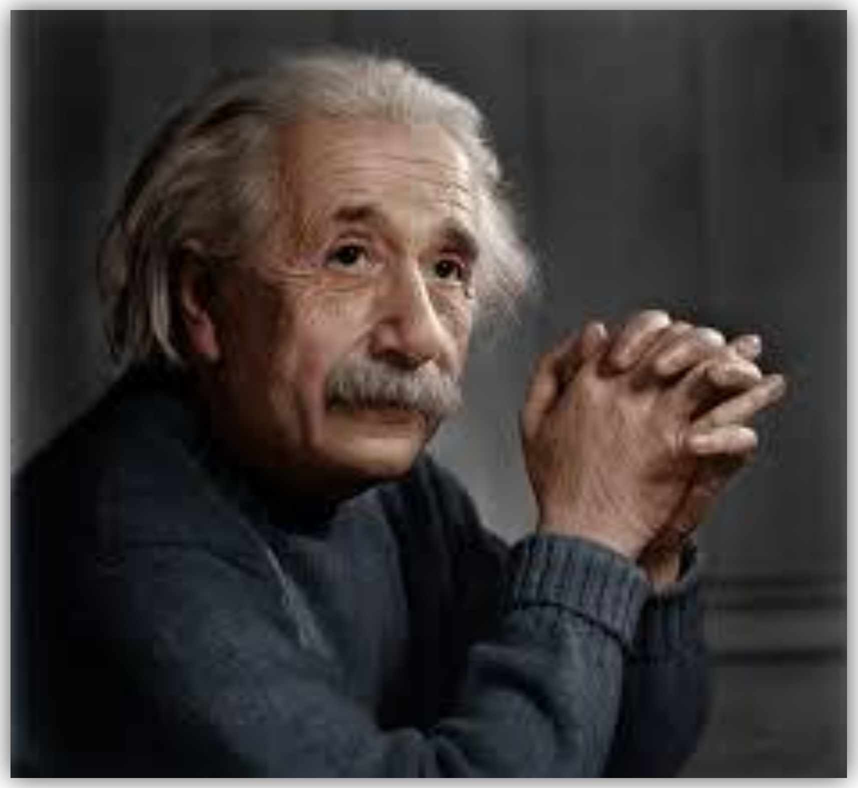

"The hardest thing to understand in the world is income tax"

- Albert Einstein

Today's discussion is all about CHANGE

- What has changed?
- What aspects of tax continue to change?
- Towards what directions are these changes leading us?
- What and how must we change?

Overview of Tax Policy

Legislation	Purpose	Date
Tax Laws		
CIT Law (Law 14, 32 and 71) VAT Law (Law 13, 31 and 71) PIT Law (Law 04, 26, and 71)	Basic foundations of tax policy	2007-2014
Tax Decrees		
CIT Decree (Decree 218, 91, 12) VAT Decree (Decree 209, 91, 12) PIT Decree (Decree 65, 91, 12)	General guidelines on tax implementation	2013, 14, February 15
Tax Circulars		
Various Circulars specifically Circular 26	Further guidelines to law and decrees	February 2015
Tax Resolutions		
Resolution No. 63	Outlines tax reforms	Aug 2014

Promoting development through tax reform

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1. CIT reforms
   - Expansion of tax incentives
   - Liberalized rules on deductibility of certain expenses
   - Simplified CIT administration
2. PIT reforms
   - More liberal treatment of certain benefits
   - Various amendments
3. VAT reforms
   - Simplified VAT filing
   - Various amendments

Exemptions and tax incentives

Additions under Law 71 and Decree 12

- Exemption of income of agricultural cooperatives
- Also, note incentives for agricultural enterprises depending on location
- Exemption for those whose 30% of employees are PWDs, reformed addicts and people infected with HIV/AIDS
- Incentives for hi-tech and new industrial support products for garments and textiles; leather products and footwear; electronics and informatics; automobile production and assembly; and engineering

Exemptions and tax incentives

- Incentives to the manufacturers with a minimum investment capital of VND 12,000 billion, using technology, and capital is fully contributed over five years

Other notable provisions

- Deletion income receivable from production or business activities outside Vietnam from list of taxable income
- Extension of incentives up to 15 years for large scale and high-tech projects
- Protection in case of amendments to the law

Other notable provisions (Decree 91)

- Income from products manufactured using new technology is entitled to tax exemption for a maximum period of 5 years (not 1 year)
- Guidelines on business expansion entitled to incentives
- Incentives in industrial zone
- Incentives for exporters

Expanded CIT deductions

- Cap on deductibility of advertising and promotion expenses has been removed (previously capped at 15%)
- Cost of life insurance benefits for employees fully deductible (previously capped at 1M)
- Expenses on professional/technical training for employees
- Interest expenses that company paid for a loan used for investment in other companies (previously non-deductible)

Simplified CIT administration

- Quarterly CIT filing is no longer required but the provisional quarterly payment of CIT is still due
- Difference between quarterly CIT paid and the annual CIT finalization return is 20% or more, enterprises shall be subject to interest penalty on the difference

Value Added Tax

- The supply of fertilizer, feed for livestock, poultry, seafood and other animals is now VAT exempt, rather than subject to 5% VAT
- When borrower has to hand over the collateral to the creditor, no VAT invoice/VAT charge is required upon the transfer of the collateral
- Imported cigarettes, spirits, and beer that are subsequently exported are VAT exempt.
- Quarterly VAT filing annual revenues (of previous year) of less than VND50 billion (no longer VND20 billion)

Personal Income Tax

- Tax exemption for employees of foreign shipping companies or Vietnamese shipping companies that provide international transport service
- Tax exemption for business income from provision of service or goods to offshore fishing activities
- Tax exemption of one-off relocation allowances for Vietnamese assignment of Vietnamese citizens who have resided overseas for a long-time.
- Income from casino winnings is no longer subject to PIT.

PIT Compliance

- Employer is required to withhold PIT at progressive tax rate on income paid to employees working under a labor contract with the term of at least 3 months.
- The employer is not responsible for the accuracy of dependant deduction declared by their employees.
- Employer is required to withhold 10% PIT on non-employment income or employment income paid to those who work under a labor contract with the term of less than 3 months

Business individuals

- Individuals can choose to apply 25% on the income or 2% on purchase price for transfer of real estate
- Individuals can choose to apply 20% on the income or 0.1% on purchase price for transfer of security

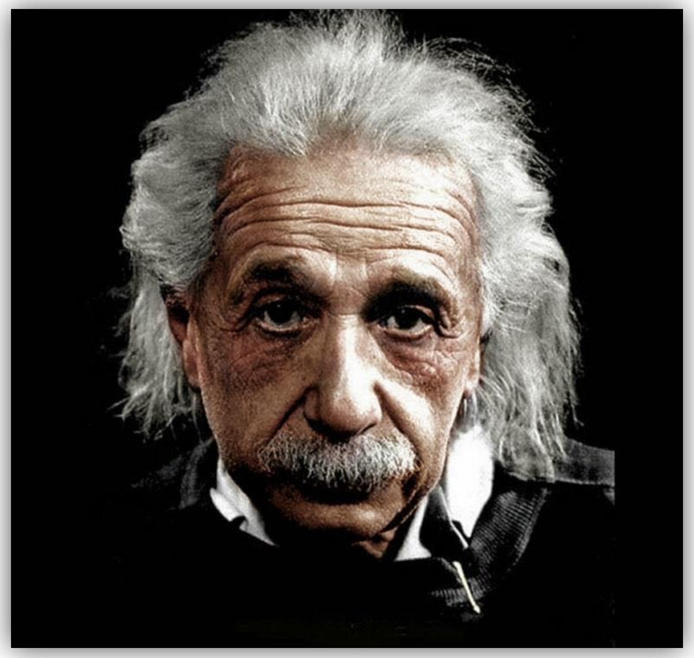
Business individuals

PIT on business income is calculated by applying a flat rate on revenue:

Activities	Tax rate
Distribution	0.5%
Service, construction not including material	2%
Property lease, insurance agent, lottery agent, or multi-level marketing	5%
Manufacturing, transportation, service attached to goods, construction including material	1.5%
Other business	1%

Business individuals

- Individual business income less than 100 million/year is non-taxable
- Individuals with at least 10 employees are required to establish an enterprise



“This is too difficult for a mathematician. It takes a philosopher.”

- *Albert Einstein on preparing his Income Tax Return*

Tax audit risk

Poor compliance

- No submission or late submission of tax returns
- Incorrect declaration of tax amount
- Fail to supply document requested by tax authority
- Fail to explain issues raised by tax authority

Other cases:

- VAT refund
- Request for tax exemption under DTAs
- CIT incentives
- Continuous loss
- High revenue but declare loss

Tax audit risk

- Expansion of business activity but losses are declared
- Significant transaction with related parties
- Significant difference in payable tax with previous years
- Rotation of loss and profit
- Low or minimum tax, profit margin is lower than other company in similar business lines
- Having a history of paying tax fines
- Re-structuring, merger, acquisition, change of business location
- Important taxpayer of city/province
- Loss after tax incentive period
- Import goods for re-export

High risk business lines

- Finance, Banking
- Pharmacy
- Real estate
- Petroleum
- Telecommunication
- Consuming goods
- Commerce
- Natural resources
- Generally most foreign investors

Vietnam will deny tax treaty relief where it is found that:

As to substance of transaction

1. The applicant is due to distribute its profit to a third country within 12 months of receipt of the income.
2. The applicant has a back to back loan, royalty or technical service agreement with a third party.
3. The applicant does not carry out any particular business operations except for right to income from assets.

4. The applicant's assets, size of business and/or a number of employees do not correspond to an amount of income received, even though the applicant may have some business operations.

5. The applicant does not have any control, power or (has) a low risk over the assets, income and/or rights to future income

6. The applicant is a resident of a low or no tax jurisdiction.

7. The applicant is formed as a special purpose vehicle solely for treaty shopping purposes.

Transfer pricing enforcement activities in Vietnam – Outlook for 2015

TP audit continues in 2015

- Focus areas:
  - Loss-making entities;
  - Entities having significant related party transactions with potential signs of TP abuse and risks
  - Industry: textile, garments, real estate, construction, steel, those in export-processing zones
- Enhanced enforcement activities on **tax administra**tion e.g. introduction of new TP disclosure form requiring more detailed disclosures and supporting analysis.

Transfer pricing audit practical experience

Practical Audit Experience

- Submission of TP disclosure form correctly and on time can help avoid penalty on late submission and/or potential tax/TP adjustments
- Submission of TPD on time sets a better tone for audit
- TPD is the first line of defense and may be used as basis to shift the burden of proof to tax authority
- CUP is preferable, especially internal CUP
- Secret comparables used to make TP adjustments
- Median and above the range of profit margin are preferred
- Pan-Asian comparables accepted in the absence of local comparables

Managing transfer pricing risks in Vietnam

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Ensure compliance with TP documentation and disclosure requirements to avoid/manage TP audit and associated risks

- Complete and accurate annual disclosure form supported by annual benchmarking search(es)/analysis

- Contemporaneous TP documentation ("TPD") report based on Circular 66
  - Localize existing global or regional TPD report; or
  - Prepare a local TPD report

On-going risk management

- Practical on-going review procedures to monitor future outcomes of pricing methods adopted

Key tax trends

- Ongoing race to tax rate attractiveness
- Tax policies are geared towards attracting FDIs
- Easing of tax compliance procedures
- Rigorous enforcement of tax laws and regulations
- What do all these mean to the taxpayer?

CIT in Vietnam and the rest of ASEAN

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Jurisdiction	CIT Rates
Brunei	20%
Cambodia	20%
Indonesia	25%
Lao PDR	24%
Malaysia	25% (Reduced to 24% in 2016)
Myanmar	25% company 35% branch
Philippines	30%
Singapore	17%
Thailand	20%
Vietnam	22% (Reduced to 20% in 2016)

Thank you

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