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Vietnam's New Policy on Tax Incentives for 'Supporting Industries'



BY VALERIE TEO AND NGUYEN TAN TAI

The Vietnamese government has recently issued Decree No. 57/2021/ND-CP (Decree 57), which amends and supplements Decree 218/2013/ND-CP.

Decree 57 removes some obstacles in applying corporate income tax (CIT) incentives regulations for enterprises investing in projects which manufacture prioritized supporting industry (SI) products, and which were in operation before January 1, 2015. Decree 57 takes effect from the date of its signing, June 4, 2021.

Pursuant to Decree 111/2015/ND-CP (Decree 111), "supporting" industries specialize in supply of raw materials, spare parts, and components to manufacturing industries, which includes electronics and mechanical engineering industries; garment and textile, leather, and footwear industries; hi-tech industries; and the automotive industry. The "List of prioritized supporting industrial products" is promulgated in the Appendix of Decree 111.

Decree 57 is considered as a stimulus measure to promote business expansion and development of the production of SI products, especially at this time when domestic enterprises are still struggling to cope with public health-related issues as well as a challenging macroeconomic situation.

Tax Incentives Available

The CIT incentive policy for projects manufacturing SI products was introduced under Law 71/2014/QH13

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effective from January 1, 2015, then Decree 111, guiding the development of SI products.

Preferential policies in this sector, in addition to CIT incentives at the highest level—tax exemption for four years, reduction of 50% of tax payable for the following nine years, and preferential tax rate of 10% for 15 years—also include other incentives such as import tax exemption for goods used to form fixed assets, and quarterly value-added tax declarations, along with other incentives for investment credit and exemption from land and water surface rents.

However, one of the difficulties in applying preferential policies in this sector had been that tax incentives, especially CIT incentives, were not applicable to SI enterprises which were in operation before January 1, 2015.

Enterprises Eligible for Tax Incentives Under Decree 57

CIT incentives for projects manufacturing SI products have been stipulated in Circular 21/2016/TT-BTC (Circular 21), whereby CIT incentives are applicable to enterprises that satisfy both the following conditions:

- new investment projects and expansion investment projects in production of goods which are on the list of SI products prioritized for development, including high-tech SI products according to the Law on High Technology, supporting industries in industries such as textiles, footwear, electronics, etc., that cannot be produced domestically (or have been produced but must meet European standards); and

- which have been granted a Certificate of Incentives for the production of SI products by a competent authority.

The beneficiaries of Decree 57 include enterprises with investment projects (newly invested and/or expanded)

which manufactured SI products before January 1, 2015 and have been granted certification of SI incentives (SI Certification). The application should fall into one of the following three categories:

- enterprises engaging in SI projects which have previously not been entitled to CIT incentives. Enterprises are eligible for CIT incentives under the conditions of SI product manufacturing projects from the tax period in which SI Certification was granted by a competent authority;

- enterprises which have fully benefited from CIT incentives under other preferential conditions. Enterprises are eligible for CIT incentives under the conditions of SI product manufacturing projects for the remaining period from the tax period in which SI Certification was granted by a competent authority;

- enterprises currently entitled to CIT incentives under other preferential conditions. Enterprises are eligible for CIT incentives under the conditions of SI product manufacturing projects for the remaining period from the tax period in which SI Certification was granted by a competent authority.

Enterprises belonging to one of the above categories could be allowed to retroactively apply the highest CIT incentive level for income generated from projects manufacturing SI products for the remaining period from the tax period of the issuance of SI Certification. The determination of the remaining period to benefit from the incentives is specifically stipulated and illustrated in Decree 57.

Treatment of Overpaid Tax Liabilities From Previous Years

Due to these changes in applicable tax incentives under Decree 57 and a corresponding decrease in tax liabilities, enterprises may have overpaid CIT and late tax payment. In this case, according to Article 60 of the Law on Tax Administration, such enterprises have the right to request the tax authorities to make adjustments and address the overpaid CIT liabilities and late tax payment accordingly.

Impact of Decree 57

The issuance of Decree 57 at this stage seems timely and beneficial for enterprises doing business in the SI

sector. The tax savings from the application of the Decree will provide financial support to enterprises in their business activities which have been impacted by the Covid-19 pandemic, and also strengthen confidence in the government's efforts to reform tax mechanisms and policies, thus promoting a more favorable business environment in Vietnam.

Planning Points

In order to benefit from the incentive policy, enterprises doing business in the SI manufacturing sector are highly recommended to:

- thoroughly analyze the current policies and review their project conditions as well as potential tax incentives for their company's SI products;

- consider applying for SI Certification, and implement tax procedures to apply for CIT incentives in accordance with the provisions of Decree 57 as well as the relevant documents for optimal taxation in Vietnam;

- maintain the qualification for the incentive criteria during the operation of their project to fully enjoy CIT incentives;

- seek professional advice where appropriate to aid in assessing the ability to meet the conditions as prescribed in the Decree in order to implement the necessary procedures to benefit from the application of the incentives.

Disclaimer

This article provides general comments and recommendations in accordance with current Vietnamese laws and regulations in effect as of the publication date. For specific circumstances, readers should seek proper advice with respect to the topic discussed herein.

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