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TAX INCENTIVES FOR SOFTWARE DEVELOPMENT COMPANIES

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Corporate income tax ("**CIT**") incentives are widely used by governments to attract investments in specific industries and localities and are highly valued by businesses in their operational strategies, as these incentives help reduce financial burdens and encourage growth. Under Vietnamese law, companies that meet specific criteria concerning industry and location may qualify for designated CIT incentives. This article provides an analysis of the CIT incentives available to businesses undertaking investment projects in the software production sector.

1. Corporate Income Tax Incentive Conditions

Pursuant to Point b, Clause 1, Article 15 of Decree No. 218/2013/ND-CP, dated December 26, 2013, detailing and guiding the implementation of the Law on Corporate Income Tax ("**Decree 218**"), and Clause 3, Article 10 of Circular No. 96/2015/TT-BTC, dated June 22, 2015 ("**Circular 96**"), which amends and supplements Clause 5, Article 18 of Circular No. 78/2014/TT-BTC (as amended and supplemented by Article 5 of Circular No. 151/2014/TT-BTC) ("**Circular 78**"), it is understood that corporate income of a company is eligible for CIT incentives, provided that the following conditions are concurrently satisfied:

(i) The income is derived from the execution of new investment projects in the field of software product manufacturing, included in the list of software products, and adheres to the

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prescribed processes for software product manufacturing[1]; and

(ii) The investment project is a domestic project associated with the establishment of a new enterprise with an investment capital of less than 15 billion VND and does not fall within the list of conditional investment sectors, and has been granted an Enterprise Registration Certificate from January 1, 2014.

Thus, it can be understood that if a domestic corporation has a charter capital of less than 15 billion VND (with no other investment sources) and ensures that the software products of the new investment project are included in the list of software products and comply with the legally prescribed software production processes, then the Company is eligible for a preferential tax rate of 10% for a period of 15 years.

Additionally, if the corporation meets the aforementioned conditions, it qualifies for CIT incentives, which include either tax exemptions or tax reductions, in accordance with Point a, Clause 1, Article 16 of Decree 218. Pursuant to these regulations, a corporation is eligible for a tax incentive that includes a 4-year tax exemption and a 50% reduction in the tax payable for the subsequent 9 years.

However, it is important to note that according to Vietnamese law, a company can only apply one method of CIT incentive at a time. This means that while a corporation may be eligible for both tax rate reductions and tax exemptions and reductions it must choose which incentive to apply, as it cannot benefit from both simultaneously.

[1] The list of software products is stipulated in Circular No. 09/2013/TT-BTTTT, dated April 8, 2013, which issues the list of software, hardware, and electronic products (as amended and supplemented) ("**Circular 09**"). The processes for software product manufacturing are defined in Circular No. 13/2020/TT-BTTTT, dated July 3, 2020, which provides regulations for identifying software manufacturing activities that meet process requirements (as amended and supplemented) ("**Circular** 13").

2. Corporate Income Tax Incentives for Expanded Investment Projects

If, during the course of executing the investment project, the corporation intends to increase its charter capital above 15 billion VND to support the development and expansion of the living project at the same location and within the same field of software product manufacturing, then the company may opt to retain the current CIT incentive rate for the remaining preferential period if it meets one of the following criteria[2]:

(i) The additional original cost of fixed assets reaches a minimum of VND 20 billion once the investment project is completed and operational, for an expansion project eligible for CIT incentives; or

(ii) The additional original cost of fixed assets represents at least 20% of the total original cost of fixed assets prior to the investment; or

(iii) The additional design capacity is at least 20% higher than the design capacity before the investment expansion.

[2] According to Clause 4, Article 10 of Circular 96, amending and supplementing Point a, Clause 6, Article 18 of Circular 78