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TAX ALERT

Tax treatment in relation to capital transfer under the Draft Law on Corporate Income Tax

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Taxation of Capital transfer by foreign corporate shareholders under the Draft Law on Corporate Income Tax

On 7 June 2024, the Ministry of Finance approved the **Draft Law on Corporate Income Tax** ("**CIT**"). This draft version was released for public consultation on 11 June 2024 (the "**Draft Law**"). Amongst the other amendments, we would like to draw your attention to the potential major changes in terms of calculation of the CIT liability on capital transfers by foreign corporate shareholders as below.

Highlights from the Draft Law

Taxpayer	Taxable income	Taxing method
Pursuant to Point 2c, 2d, Article 2, foreign entities (regardless of permanent establishment status in Vietnam) having income in Vietnam are amongst the cases being considered as a taxpayer for Vietnam tax assessment purposes.	As per Point 3, Article 3, it is further defined that "taxable income arising in Vietnam" of the foreign entities is income sourced from Vietnam from the business activities, including capital transfer.	According to Point 2, Article 11, CIT liability of the taxpayers stipulated under Point 2c, 2d Article 2 is determined by: **Tax Rate (%) x Sale Proceeds**. The tax rate varies depending on the type of transaction. The applicable tax rate for capital transfer is 2%.

Potential impacts to M&A transactions

- If the Draft Law is approved, foreign entities conducting capital transfer in Vietnam would be subject to Vietnamese CIT at the rate of **2% on the gross sale proceeds**, instead of being subject to 20% tax on the gain pursuant to the current regulations. This means that regardless of whether or not the foreign transferors generate a gain from a capital transfer transaction, Vietnamese CIT on capital transfer will arise.
- The concept of taxing the foreign entities on Vietnam-sourced income has also been specified in the Draft Law which will strengthen the position of the Vietnamese tax authority in terms of taxing the foreign entities from indirect shares transfer transaction.

Deloitte's view

- *In case the current version of the Draft Law is submitted to the National Assembly Meeting in October 2024 and approved in May 2025 Meeting, the new Law could be in force from 1 January 2026.*
- *With the above major changes proposed in the Draft Law, it is strongly suggested that the foreign investors (and the Vietnamese investees) should closely monitor the development of this Draft Law to have proper planning for any upcoming M&A or restructuring transactions.*

Should you need further discussion or assistance on this matter, please contact us.

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