**TAX INCENTIVES AND APPLICATION CONDITIONS**

**FOR TECHNOLOGY ENTERPRISES IN VIETNAM**

In order to grasp opportunities in the current of industrial revolution 4.0, create motivation to promote and encourage the enterprises to increase investment in technology fields, Vietnam has regulations on tax incentives for the Enterprises in information technology field.

Software enterprises manufacturing software, since it was established, have been entitled:

1. **Value Added Tax (VAT)**

According to Article 4, Clause 21 of Circular 219/2013/TT-BTC on objects not subject to VAT:

“Technology transfer in accordance with Law on Technology transfer; intellectual property right transfer in accordance with the provisions of the Intellectual Property Law. In case the technology transfer, intellectual property right transfer contract is attached to machinery and equipment transfer, the object being not subject to the VAT calculated on the value of technology, transferred and concessive intellectual property rights; In case a separation cannot be performed, the VAT is calculated on the value of technology, transferred and concessive intellectual property rights with machinery and equipment. Computer software includes software products and software services as prescribed by law.”

**Thus, computer software production manufacture and software services are not subject to VAT if the Company's software products and software services are provided and consumed in Vietnam.**

1. **Corporate income tax (CIT)**
2. **CIT incentives for enterprises manufacturing software products**

According to the provisions of Circular 78/2014/TT-BTC and Circular 96/2015/TT-BTC amending and supplementing this Circular, the enterprises manufacturing software products are entitled to the following incentives:

* **Year 1 to year 4:** Corporate income tax exemption.

The year of tax exemption or reduction is determined in accordance with the tax period. The time to start calculating the period of tax exemption and reduction is continuously calculated from the first tax period when the enterprise begins to have tax income (not deducted from the loss of previous tax periods transferred to).

If there is no taxable income from year 01 to year 03, the starting time for enjoying tax exemption incentives will not be counted based on this duration. But when coming to the 4th year, this duration must be counted as the first year of CIT exemption even though there is no taxable income.

* **Year 5 to year 13:** 50% reduction of corporate income tax at 10% tax rate, i.e. only 5% must be paid.
* **Years 14 and 15:** Paying Corporate Income Tax at the 10% tax rate.
* **From the 16th year:** Pay 100% of corporate income tax at the common tax rate (which is 20%).

**\*Note that:** (i)If an enterprise buys/sells software, it cannot be entitled to CIT incentives as above; (ii) During the time of enjoying CIT incentives, if the enterprise performs many manufacturing and business activities, it must separately calculate income from software product manufacturing activities.

1. **Conditions for enjoying PIT incentives from software product manufacturing activities**

In order to enjoy CIT incentives for software manufacturing, initially, the enterprises must prove that they have manufacturing activities of this product.

According to the provisions of Article 4, Circular 13/2020/TT-BTTTT, the enterprise will be determined to have software product manufacturing activities if it performs at least one of two stages: Determining requirements; Analyzing and designing among 07 stages of software product manufacturing process including:

* **Identifying customer requirements;**
* **Analysizing and designing as required;**
* **Programming, writing code;**
* **Testing and experiment with software;**
* **Completing and packaging the software products;**
* **Installing, transferring, guiding principles for utilisation, maintaining and guaranteeing the software products;**
* **Releasing and distributing the software products.**

Each stage will include many different contents (operations), the enterprises need to perform at least one operation in a stage to be considered to have performed that stage.

It should be noted that the software products manufactured by the enterprises must be included in the List of software products promulgated under Circular 09/2013/TT-BTTTT of the Ministry of Information and Communications to be the subjects entitled the tax incentives.

1. **Composition of documents proving the conditions eligibility**

The necessary documents to prove that the enterprise has performed the stages in Section 2 above include:

**\*For the Requirement Determination stage:**

* Description of idea of ​​ product developing method;
* Description of product characteristics (requirements), product usage contexts;
* Description of proposals, survey results, clarification results and completing requirements for the products;
* Description of detailed business analysis;
* Description of complete requirements for the product;
* Description of consulting content of process adjustment;
* Record of requirements unification, requirements approval, description of controllability and the basis for confirming compliance of the product requirements.

**\*For Analysis and Design stage:**

* Description of requirement;
* Description of developing math;
* Description of appropriate techniques implemented to optimize the solution, analyze correctness and for testability of the software, influence analysis of the software requirements on the operating environment, listing the requirements prioritized, approved and updated when it is necessary;
* Description of data model, functional model, information flow model;
* Description of the software solution;
* Design of solution, software system, data, architecture, units, software component module;
* Design of security and information safety for software;
* Design of customer experience interface.

1. **Procedures for enjoying CIT incentives**

According to the provisions of Circular 78/2014/TT-BTC, the Company must separately calculate income from manufacturing and business activities entitled to the CIT incentives and the income from the manufacturing and business activities not entitled to the tax incentives to declare and pay taxes separately.

The company implements conditions of accounting, invoices, vouchers and pays the corporate income tax according to the declaration to be eligible for the incentives.

The company determines itself the tax incentives and preferential CIT rates to be entitled to for self-declaration and tax finalization with the tax authorities. The tax authority only checks and inspects the satisfaction of the above conditions of the enterprise and in case the inspection expresses that the enterprise does not meet the conditions for tax incentives enjoyment, the tax authority will handle tax arrears and penalizes for the tax-related administrative violations in accordance with relevant Laws.

***Le Tien Dat – Ngo Mau Hoang***

**ADK & Co Vietnam Lawyers**