

Special Alert

June 2024

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Proposed Change in Corporate Income Tax Rules and Impacts on Cross-border M&A Transactions

On 11 June 2024, the Ministry of Finance published a Draft Law on Corporate Income Tax (the “**Draft CIT Law**”) introducing revolutionary reforms. One of the significant changes includes a transformation in how CIT is calculated for foreign entities engaged in capital transfer transactions in Vietnam.

Proposed Change

Under the Draft CIT Law, foreign entities, regardless of whether they have a permanent establishment in Vietnam, will be subject to a proposed tax rate of 2% on gross sale proceeds from capital transfers. This means that even in the absence of capital gains, foreign corporate investors transferring capital in Vietnam will still be liable for this tax, which is significantly more onerous than the current regulation.

Aspect	Current Regulation	Proposed Change
Tax rate	20% on actual gains	2% on gross sale proceeds
Applicability	If there are actual gains	Regardless of actual gains

The proposed change mirrors the flat tax rate mode applied to capital transfers by individuals under the existing Circular No. 111/2013/TT-BTC of the Ministry of Finance since 2013. Accordingly, individuals, both residents and non-residents, are levied a tax rate of 0.1% on the gross sale proceeds.

On a separate note, the tax rate applicable to the transfer of securities (e.g., shares of public companies) by foreign investors remains unchanged at 0.1% on the gross sale proceeds under the Draft CIT Law. Additionally, the tax rate applicable to capital transfers by Vietnamese entities remains unchanged at 20% on the actual gains.

Implications for M&A Transactions

The proposed revisions could exert a significant influence on M&A Transactions involving foreign entities:

Increased tax burden	A flat 2% tax on capital transfers, even with no gains, may deter potential foreign investors
Transaction structuring	More intricate structuring may be required for M&A deals, increasing complexity and costs
Valuation adjustments	Cross-border transaction valuation models may need recalibrating to account for these new tax obligations

Strategic Considerations

While still in draft form, this change signals a potential shift towards a more assertive tax regime for foreign entities. Immediate action is advised to assess current structures and seek expert consultation to navigate this impending change effectively. Our team stands ready to provide guidance and support in preparing for and adapting to these potential regulatory shifts.

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