



RHTLaw Vietnam

LEGAL UPDATE

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INTERNAL RESTRUCTURING – CAPITAL GAINS TAX EXEMPTION AND PROSPECT OF FURTHER REGULATORY RELIEF

Internal restructuring refers to a transaction, or a series of transactions, which may involve, among others, the transfer of shares or control among entities within the same corporate group.

Such internal restructuring may be subject to the administrative procedures, including, among other things, obtaining approval for capital contribution or capital transfer, and declaring and paying capital gains tax. Such administrative procedures are designed to address regulatory concerns and, accordingly, enhance state governance and protect investors as well as the public interest.

However, many such transactions aim to reorganize a business group's legal and operational structure to enhance efficiency, increase profitability, and attract investors, and do not give rise to such regulatory concerns - for example, where no gains are generated from internal capital transfers.

This raises the question of whether administrative procedures can be streamlined or waived to ease administrative burdens for investors.

CORPORATE INCOME TAX EXEMPTION

Recently, Decree No. 320/2025/ND-CP, which guides the 2025 Law on Corporate Income Tax (“**Decree 320**”), has officially recognized corporate income tax (“**CIT**”) exemption applicable to certain qualified internal capital transfer by foreign investors.

In particular, a foreign investor may be exempt from CIT on income derived from a capital transfer if the transaction:

(i) is an **internal restructuring**, which **does not change the ultimate parent company** of the parties that directly or indirectly own the Vietnamese enterprise after the restructuring; *and*

(ii) does not generate income.

To qualify for the CIT exemption, the parties must demonstrate that the transaction does not lead to any change of the ultimate parent company. This requirement effectively obliges foreign investors to disclose and substantiate their ownership structure.



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This approach seems to align with the recently amended Law on Enterprises which requires the disclosure of ultimate beneficial owners of enterprises, enhancing Vietnam's commitments to Financial Action Task Force (FATF) on anti-money laundering and counter-terrorist financing.

M&A APPROVAL

Under the Law on Investment 2020, the approval for capital contributions, share or capital acquisitions ("**M&A Approval**") is designed to address specific regulatory concerns, notably on (i) the nationality of the investor, (ii) the foreign shareholding, and (iii) the involvement of land use rights in areas sensitive from a national defense and security perspective.

In many internal restructuring transactions between group companies of the same nationality, while the identity of the investors may change, there is no change in either (i) the nationality of investors, or (ii) the overall foreign ownership percentage in the target company. Also, where no sensitive land use rights are involved, the regulatory concerns underpinning the M&A Approval regime may not be triggered.

Given this, may the requirement to obtain M&A Approval also be waived?

In practice, some investment licensing authorities adopt the aforesaid interpretation and consider not requiring M&A Approval. However, **this approach has not been applied consistently across local authorities**, resulting in divergent practices and legal uncertainty for investors.

CONCLUSION

The formal recognition of a CITs exemption for internal restructuring represents an important step in transparent ownership, thereby enhancing Vietnam's commitment in anti-money laundering and counter-terrorist. Looking ahead, further regulatory relief for M&A Approval may be expected to enhance regulatory coherence, improve the investment environment, and support the continued attraction of foreign investment into Vietnam.



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