

CORPORATE INCOME TAX FOR ENTERPRISES OWNING INVESTMENT PROJECTS IN VIETNAM INDUSTRIAL PARKS

IMPOSTO DE RENDA CORPORATIVO PARA EMPRESAS QUE POSSUEM PROJETOS DE INVESTIMENTO NOS PARQUES INDUSTRIAIS DO VIETNÃ

Doan Hong Nhung

Vietnam National University, Hanoi,
University of Law, Vietnam
doanhongnhungvn@gmail.com

Khuc Thi Trang Nhung

Hanoi Procuratorate University,
Vietnam
trangnhung.7987@gmail.com

Phieu Du

Vietnam National University, Hanoi,
University of Law, Vietnam
hungnvl@vnu.edu.vn

Abstract: Corporate income tax for enterprises owning investment projects in industrial parks is one of the regulations that attract investors as well as a factor promoting the investment process in Vietnam. Furthermore, given that Vietnam is a popular destination for international investors, the regulations on corporate income tax for enterprises owning investment projects in industrial parks are gaining popularity. So, the article gives an overview of the current system of legal documents that govern corporate income tax in Vietnam. Based on this, it suggests some ways to improve the efficiency of implementing corporate income tax for enterprises owning investment projects in industrial parks in Vietnam.

Keywords: Corporate income tax, investment incentives, corporate income tax incentives, investment projects in industrial parks, limitations.

Received: 10 Mar 2023

Accepted: 28 May 2023

Published: 24 Jun 2023

Corresponding

doanhongnhungvn@gmail.com



maneiras de melhorar a eficiência da implementação do imposto de renda corporativo para empresas que possuem projetos de investimento em parques industriais no Vietnã.

Resumo: O imposto de renda corporativo para empresas que possuem projetos de investimento em parques industriais é um dos regulamentos que atraem investidores, bem como um fator que promove o processo de investimento no Vietnã. Além disso, dado que o Vietnã é um destino popular para investidores internacionais, os regulamentos sobre imposto de renda corporativo para empresas que possuem projetos de investimento em parques industriais estão ganhando popularidade. Portanto, o artigo fornece uma visão geral do atual sistema de documentos legais que regem o imposto de renda corporativo no Vietnã. Com base nisso, sugere algumas

Palavras-chave: Imposto sobre o rendimento das pessoas colectivas, incentivos ao investimento, incentivos ao imposto sobre o rendimento das pessoas colectivas, projectos de investimento em parques industriais, limitações.

1. Introduction

At the end of 2022, there were 411 industrial parks (IPs) established in Vietnam, with a natural land area of about 129,3 thousand hectares. The total area of industrial land is about 87,2 thousand hectares. Of the IPs that have been set up, 293 IPs have been put into operation, covering a total of about 92,2 thousand hectares of natural land and about 62,9 thousand hectares of industrial land. Another 118 IPs are being built, covering a total of about 27,1 thousand hectares of natural land and about 24,2 thousand hectares of industrial land (Economic Zone Management Department, 2022). Besides, the total registered foreign investment capital is over 438,7 billion USD with 36,278 investment projects (Foreign Investment Agency, 2022). It can be seen that IPs play a particularly important role in the “rapid economic growth of Vietnam” (Doan Hong Nhung et al, 2023, pp. 549). Therefore, encouraging investors, domestic enterprises, and foreign investors to invest in projects in IPs is one of the main aims of the Party and State of Vietnam. In order to accomplish this, it is necessary to have a special investment incentive policy for investors when conducting investment projects in IPs. Specifically, the application of investment incentive policies, especially corporate income tax incentives, has a spillover effect, attracting domestic and foreign investors to the connecting infrastructure and utility services to serve the industrial park and, at the same time, creating a source of state budget revenue to reinvest in the technical infrastructure of the localities. Thereby, step by step, promoting the process of urbanisation in the direction of changing backward rural areas into developed urban-industrial zones. Along with that, the IP is an industrial production model that generates favourable conditions for environmental conservation, green growth, and sustainable development.

2. Literature Review

Taxes, particularly corporate taxes, are frequently topics that attract the attention of scholars in Vietnam. This is also very important information for enterprises investing in Vietnam. Therefore, the study in Vietnam related to taxes and taxes for enterprises owning investment projects in IPs can be mentioned as follows: Nguyen Minh Hang (2011) with “*Public Finance Law Textbook*”; Nguyen Thi Trang (2014) with “*Law on investment incentives for enterprises in IPs nowadays, some theoretical and practical issues*”; Nguyen Thi Lan Huong (2016) with “*Tax Law: Theory, History, Reality, and Comparison*”; Hanoi Law University (2018) with “*State Budget Law*

Textbook”; Le Xuan Truong (2019) with “*Tax Policy to Attract Foreign Direct Investment Enterprises to Vietnam*”; Hanoi Law University (2020) with “*Vietnamese Tax Law Textbook*”; Nguyen Vinh Hung (2020) with “*Personal Income Tax Law: Some Limitation and Recommendations*”; Khuc Thi Trang Nhung (2022) with “*Discussion of CIT incentives for enterprises owning investment projects in IPs*”.

Because the research has spread out over numerous contents, the above studies have not been specialised in CIT for enterprises owning investment projects in IPs. Therefore, on the basis of inheriting and growing from earlier studies, the authors conducted research that was thorough and comprehensive about CIT for enterprises owning investment projects in Vietnam’s IPs.

3. Methodology

In researching this topic, the group of authors used qualitative research methods based on secondary data, analytical methods, synthesised methods, sociological statistical methods, and adjudication methods to assess a number of legal issues on CIT for enterprises owning investment projects in IPs in recent years and evaluate tax incentive policies for enterprises in the IPs.

4. Result and Discussion

4.1. Corporate income tax in industrial parks

“In Vietnam, taxes and tax regulations are enacted to generate revenue for the State” (Nguyen Thi Lan Huong, 2016, pp. 05). In terms of economic efficiency, taxes are the source of revenue that provides the biggest contribution to the “state budget fund” (Hanoi Law University, 2018, pp. 07). In particular, CIT (also known as “income tax” (Hanoi Law University, 2018, pp. 217)) is a part of Vietnam's tax legal system and is “an important source of state budget revenue” (Nguyen Minh Hang, 2011, pp. 119 - 121).

Income tax is a direct tax levied directly on the actual income of organisations and individuals. Income tax includes personal income tax and CIT. For more detail, CIT can be defined as the revenue arising from business activities and other incomes of enterprises. As a direct tax levied on the income of enterprises, CIT contributes to ensuring a fair and reasonable contribution between individuals and organisations producing goods and services, with income, as well as, being considered an important tool to encourage and promote investment,

production, and business development according to the plan and oriented strategy of the State. In addition, CIT in particular and “the tax legal system in general are both important tools for the government to manage and stabilise the macro-economy” (Nguyen Vinh Hung, 2020, pp. 28).

Nowadays, CIT is especially important in developing nations for ensuring and stabilising state budget revenues as well as distributing income. Most countries in the world have CIT incentive, exemption, and reduction regulations. In Vietnam, depending on each sector in which enterprises invest or the geographical location of their production and business activities, different levels of CIT incentives, exemptions, and reductions are provided so as to conform to the development orientation of the Party and State about the industrialised and modernised economies. The draw of investment, especially foreign investment capital, into IPs in Vietnam is becoming a urgent issue, imposing requirements for legal policies, especially policies regarding CIT. It is vital to make appropriate reforms to encourage investment in IPs while maintaining a balance between interests and state budget revenues.

4.2. Assessment of corporate income tax incentives for enterprises owning investment projects in industrial parks

General policy on investment incentives for industrial parks

IPs are entitled to preferential policies applicable to areas with difficult socio-economic conditions. This is a fairly consistent regulation and is inherited from Decree 108/2006/ND-CP guiding the implementation of the Law on Investment 2005, Decree 118/2015/ND-CP (“Decree 118”) guiding the implementation of the Law on Investment 2014, and Decree 31/2021/ND-CP (“Decree 31”) guiding the Law on Investment 2020 (currently in effect). Decree 29/2008/ND-CP stipulating: *“IPs are geographical areas eligible for investment incentives or enjoying preferential policies applicable to localities on the list of those with difficult socio-economic conditions. IPs located in localities on the list of those with particularly difficult socio-economic conditions may enjoy preferential policies applicable to localities on the list”*(Article 16.1). Decree 35/2022/ND-CP (“Decree 35”) further reaffirms this: *“IPs are classified as geographical areas eligible for investment incentives, which are entitled to investment incentives applicable to geographical areas with difficult socio-economic conditions in accordance with the law on investment”*² (Article 22.1).

Regulations on investment incentives: Along with the growth of IPs, the legal system governing

¹ Decree 29/2008/ND-CP date March 14, 2008, of the Government providing for industrial parks, export processing zones and economic zones.

² Decree 35/2022/ND – CP dated May 28, 2022 on management of industrial parks and economic zones in Vietnam

actions in the field of investment incentives has been reviewed and improved to facilitate and promote investment attraction in this field. In recent years, the National Assembly and the Government have issued new regulations on investment and enterprises, such as Decree 31 and Decree 35 stipulating the management of IPs and economic zones. In addition, many regulations are directly related to investment and development activities in IPs, such as investment orders and procedures and the authority and responsibility of relevant parties, particularly regulations aimed at revenue collection, attracting investment capital into IPs, and creating favourable conditions for domestic and foreign investors to conduct investment projects in IPs in Vietnam, as follows:

Decree 31 provides a list of projects in the sectors and industries eligible for investment incentives and special investment incentives. Moreover, the construction and business of the infrastructure of IPs and export processing zones remain on the list of business lines with special investment incentives. The Decree also provides a list of sectors for development investment, operation, and administration of technical infrastructure facilities works in industrial clusters to the group of special investment incentives. This demonstrates that the government is particularly concerned in attracting investment in IPs.

Regarding the list of investment incentive locations: Decree 31 specifies the list of areas eligible for investment incentives in areas with difficult socio-economic conditions or areas with extremely difficult socio-economic conditions, in accordance with the provisions of Appendix III, which was issued with the Decree. Furthermore, IPs, export processing zones, and industrial clusters that were formed in accordance with the Government's regulations are included on the list of areas eligible for investment incentives.

Regulations on conducting incentives procedures: Decree 35 standardises and completes the IPs management model based on the principle of “one-stop-shop, on-site” through the role of focal point of the IPs Management Board. At the same time, to guarantee conformity with recently enacted legislation and the realities of development investment in IPs, the Decree introduces a number of additional provisions. From a management perspective, the legal framework related to investment procedures is continuously developing in the direction of eliminating needless procedures, inconveniences, and expenses in terms of time and money for enterprises.

Regarding the procedure for confirmation of incentives: According to the guidance in Circular 80/2021/TT - BTC guiding the Law on Tax Administration No. 38/2019/QH14 and Decree 126/2020/ND - CP, the procedure for confirming incentives includes: Pursuant to the provisions of the written approval of the investment policy (if any), the investment registration certificate (if any), the decision on approval of the investor, and relevant regulations of law, the

investor (after meeting all the conditions as prescribed) self-determines investment incentives, compiles dossiers, and submits them for investment incentives at tax offices, financial agencies, customs offices, and other competent agencies with rights corresponding to each type of investment incentive.

Regarding assignment of authority of state agencies: To execute the State management of IPs, a system of IPs Management Board has been formed in localities around the country. IPs Management Board under the administrative agencies of provinces and centrally run cities. The Management Board will be established by the Prime Minister's decision and subject to the guidance and management of the organisation, personnel, programming, plan, and operating costs of the provincial People's Committees. At the central level, the focal point for the management of IPs is the Economic Zones Management Department under the Ministry of Planning and Investment.

The IPs Management Board serves as the focal point for assisting investors in completing necessary processes when investing in IPs. Authority of the IPs Management Board regarding the grant of investment incentives, such as registering investments and verifying, granting, modifying, and revoking the Investment Certificate for investment projects under its authority in accordance with the provisions of the law on investment, inspecting and supervising the implementation of investment objectives in the Investment Certificate, the progress of capital contributions and the implementation of investment projects, and the implementation of the commitment terms for projects entitled to investment incentives. Thus, the implementation of state management decentralisation for the IPs Management Board demonstrates the importance of the policy of minimising administrative procedures. The administration of investment licensing is carried out using the "one-stop shop, on-site" mechanism, which has had positive effects on IPs development by ensuring promptness, initiative, positivism, and savings. In recent years, the activities of the provincial IPs Management Board have come into order and promoted the positive effects of the "one-stop shop, on-site" management mechanism to assist in establishing a favourable investment environment, thereby promoting investment attraction in IPs.

Results of attracting investment in IPs: IPs across the country have mobilised a considerable quantity of investment capital from all economic sectors, both local and foreign, thereby enhancing the efficacy of land use and contributing to the industrialization and modernization of the nation. At the end of 2022, there were 411 IPs all over the country, covering about 129,300 hectares of land. The total area of industrial land is about 87,2 thousand hectares. Among the established IPs, 293 have been put into operation, covering a

total natural land area of about 92,2 thousand hectares and an industrial land area of approximately 62,9 thousand hectares. Another 118 hectares of the IPs are under construction, totaling around 27,1 thousand hectares of natural land and approximately 24,2 thousand hectares of industrial property (Economic Zone Management Department, 2022). IPs were established in 61 provinces and cities, mostly in significant economic zones, to promote the advantages of geographical location and the regions' economic growth potential.

In recent years, IPs and economic zones have drawn a substantial quantity of investment capital, offering essential resources for development investment and fostering economic growth. It is estimated that in 2022, IPs and economic zones across the country attracted about 580 foreign investment projects and 646 domestic investment projects (including both new investment projects and projects to increase investment capital), with newly and additionally registered capital of approximately 13,5 billion USD (up about 5,7% from 2021) and 25,2 trillion billion VND (up about 7% from 2020). Up to now, IPs and economic zones all over the country have attracted more than 11,2 thousand foreign investment projects and 10,4 thousand domestic investment projects, with total investment capital of 238,6 billion USD and 2,54 million billion VND, realised investment capital is approximately 69% and 46,5% respectively (Economic Zone Management Department, 2022).

Investors' development of IPs infrastructure and functional zones in economic zones has a spillover effect, attracting additional investors to invest in connection infrastructure and convenient services to serve IPs and economic zones while also generating state budget revenue to reinvest in localities' technical infrastructure. Thus, gradually advance the urbanisation process towards the transformation of backward rural areas into developed urban-industrial areas.

Regulations on CIT incentives applicable to enterprises owning investment projects in Ips

In addition to the general investment incentive policies applied to enterprises with investment projects in IPs, CIT policies for enterprises with investment projects in IPs are regarded as one of the most important factors in attracting investors when selecting sectors, business lines, and investment locations when investing in IPs. The favourable CIT policy given to projects in IPs, in particular, impacts two major groups of subjects: (i) Enterprises investing in and developing the IP infrastructure facilities are investors carrying out investment projects for the development of the IP infrastructure facilities. According to the definition in Decree 35,

investment project on construction and commerc

*ial operation of IP infrastructure facilities means an investment project that uses land to build complete technical infrastructure facilities in an IP and leases or subleases land to investors for construction of workshops, working offices, warehouses and storing yards, and service and public-utility facilities, implementation of investment projects, or organisation of production and business activities in accordance with law*³ (Article 2.12). As a result, the investor that implements the investment and development of the IP infrastructure facilities project is referred to as a level 1 investor in IPs - operating in the field of real estate business and investing in IPs to develop infrastructure for business purposes in various forms: subleasing land, leasing factories, transferring assets on land, and providing other IP infrastructure services; (ii) other investors who hold Ips investment projects based on subleasing land and factories, receiving asset transfers on land, and using IP infrastructure services to perform manufacturing operations in their sphere of business. This group is known as secondary investors in IPs.

(i) For enterprises investing in construction and commercial operation of IP infrastructure facilities, Law on CIT 2008 (effective from January 1, 2009), excludes the application of CIT incentives to income from real estate transactions. In Article 13, Decree 124/2008/ND-CP (“**Decree 124**”) date December 11, 2008, detailing and guiding the implementation of a number of articles of the Law on CIT, provides that: “*Incomes from real estate transfer include income from the transfer of land use or lease rights; income from sublease of land of real estate-trading enterprises under the land law, regardless of whether infrastructure or architectural works attached to land are available or not*”. The particular guideline of the Ministry of Finance regarding income tax on commercial operation of industrial park infrastructure, as outlined in Official Dispatch 13480/BTC-TCT dated September 23, 2009, as follows:

“For enterprises established before January 1, 2009, and owning investment projects to develop infrastructure of IPs, export processing zones and hi-tech parks, and projects that were allocated or leased land before January 1, 2009, for investment in building infrastructure and later subleasing the land with built infrastructure, incomes earned from these activities shall be regarded as incomes from infrastructure development and are eligible for the CIT incentives under regulations.

If these investment projects are enjoying the CIT incentives, they may continue enjoying the incentives for the remaining incentive duration based on the conditions they satisfy”.

“Enterprises implementing investment projects in the construction and commercial operation of infrastructure facilities in IPs, export processing zones, high-tech zones, and economic zones were established or

³ Decree 35/2022/ND – CP dated May 28, 2022 on management of industrial parks and economic zones in Vietnam

granted investment certificates before January 1, 2009, in an area entitled to CIT incentives but receiving land handover after January 1, 2009, the income arising from land sublease for the allocated or leased land area after January 1, 2009, income from real estate transfers are not eligible for CIT incentives⁴.

From January 1, 2009, infrastructure development enterprises that are allocated or leased land by the State for investment in infrastructure development and then lease back land already developed to other enterprises in industrial parks or export processing zones by the State pay income tax according to Law on CIT No. 14/2008/QH12 and Decree 124/2008/ND-CP dated December 11, 2008 of the Government and Circular 130/2008/TT-BTC dated December 26, 2008 of the Ministry of Finance, guiding situations not entitled to CIT incentives.

(ii) CIT incentives for secondary investors in IPs: Law No. 32/2013/QH13 on amendments and supplements to a number of articles of the Law on CIT 2008 passed by the XIII National Assembly at the 5th session on June 19, 2013, took effect on January 1, 2014, has overcome the shortcomings of CIT incentives for projects established in IPs under Law on CIT 2008 and Decree 124, such as:

Projects of manufacturing enterprises investing in IPs are exempted from tax for 2 years, reduced by 50% for the next 4 years from the date of taxable income, except for IPs located in areas with advantageous socio-economic condition (Article 16.3, Decree 218/2013/ND-CP (“**Decree 218**”)). Consequently, except for enterprises owning investment projects in IPs with favourable socio-economic conditions, manufacturing enterprises investing in IPs are entitled to CIT incentives as above. Accordingly, this Decree defines: “*Areas with advantageous socio-economic conditions are urban districts of urban cities of special type or type I directly under the Central and urban cities of type I directly under provinces; where the IPs are located in both advantageous and disadvantageous areas, the determination of tax preferential for IPs is based on the areas with a larger IP area. The determination of urban cities of special type or type I specified in this Clause shall comply with regulations of the Government on the classification of urban cities*”⁵.

Nevertheless, on October 1, 2014, less than one year after the date on which Decree 218 became effective, the Government published Decree 91/2014/ND-CP (“**Decree 91**”) amending and supplementing Decree 218. This Decree states that “*the determination of tax incentives for IPs located in both localities with favourable and unfavourable conditions must be based on the field locations of investment projects*” (Article 1.6). As a result, a number of IPs included in the Development Plan of Vietnam's IPs will either not be eligible for CIT incentives or will have the amount of those

⁴ Official Dispatch No. 13480/BTC-TCT of September 23, 2009, on income tax on commercial operation of industrial park infrastructure.

⁵ Article 16.3, Decree 218/2013/ND-CP dated December 26, 2013 of the Government detailing and guiding the implementation of the Law on Enterprise Income Tax.

incentives reduced (Nguyen Thi Trang, 2014, pp. 69).

As a result, while Decree 35 continues to state that IPs are areas of investment incentives, they are also entitled to investment incentives applicable to areas with difficult socioeconomic conditions under investment law, which means that all investment projects in an IPs, regardless of where the IPs is located, are eligible for investment incentives. The current CIT incentive legislation is Decree 218 and Decree 91, which both provide that only investment projects in IPs in less advantageous locations are eligible for incentives.

Meanwhile, in some countries around the world, foreign investors who set up legal entities or new branches in Japan, and in some other cases, will be required to submit registration documents tax to the tax authority for a period of time. Even if the foreign legal entity is unable to establish a branch but obtains revenue from within the country, the legal entity's tax trustees, legal entities, or pension company are still deemed taxable and must file tax registration documents⁶. In fact, in 2011, Japan had the highest CIT rate of all the Organisation for Economic Co-operation and Development (OECD) countries at 39,5%. In recent years, however, Japan has had policies to lower CIT. Specifically, from 2016 to 2018, the CIT rate in Japan was 15% for enterprises that are common legal entities, 19%, 23,4%, and 23,2% for some other entities (SB Law, 2019). Besides Japan, a number of G7 countries reached an agreement on the reform of the minimum rules on international taxation. As a result, a growing number of states have changed to the minimum tax rate in order to preserve their existing tax base. This is particularly accurate in developing countries with weaker tax administrations, which have more obstacles to taxing these huge multinational corporations effectively. The amended minimum taxes on corporate income resulted in the highest increase in effective taxes, followed by property and sales taxes, with the ultimate impact on revenue depending on the rate applied. The tax agreement reached by the G7 countries has given new impetus to the reform of international tax regulations driven by international organisations. The OECD and G20 have proposed instituting a worldwide minimum corporate tax on the profits of multinational corporations by the end of 2020 (Aqib Aslam et al., 2021). This can assist in preventing the transfer of tax income from the host country to the source country as a result of stable tax incentives. Moreover, governments also promptly alter their laws, treaties, and investment treaties in order to control them under the influence of a minimum tax rate. Furthermore, it could ultimately protect countries that choose to remove tax incentives from stabilisation arrangements with the express purpose of introducing an ETR (Effective Tax Rate) that meets the minimum global

⁶ Article 138 of the Juridical Persons Tax Law of Japan.

rate.

4.3. Obstacles should be addressed in order to attract investment in the tax field

Firstly, at present, the regulatory system on investment incentives in specialised documents is still not synchronised and compatible with the Decree on IPs and the Law on Investment, particularly tax regulations. According to the Decree on the Management of IPs and the Decree guiding the Law on Investment so far, an IP is an investment incentive area that is eligible for investment incentives that apply to socio-economic areas in difficult societies. The Law on CIT 2008 (amended and supplemented in 2013) and Decree 218, however, introduced a list of geographical areas eligible for CIT incentives, in which the IPs are not included in the list of geographical areas with socio-economic difficulties. Despite the fact that this list was repealed by Article 66.2 of Decree 118, investment projects in IPs from 2009 to before 2016 are not eligible for special consideration for CIT incentives.

Second, there is geographical location discrimination for tax incentives. Current CIT regulations only allow: Enterprises' incomes from conducting new investment projects in IPs (excluding IPs in areas with favourable socio-economic conditions) are eligible for CIT incentives. Accordingly, localities with favourable socio-economic conditions specified in this Clause are inner districts of centrally run special-grade or grade-I centres and provincially run grade-I urban centers, excluding newly established districts from January 1, 2009, of centrally run special-grade or grade-I urban centres and provincially run grade-I urban centres (Article 1.6, Decree 91). As a consequence, if a number of IPs in the Development Plan of Vietnam's IPs are established in these areas, they will not be eligible for CIT incentives. Indeed, up to 80% of IPs are currently placed in critical economic zones with synchronous technological infrastructure and traffic to facilitate products transit and circulation. Without investment incentives, investors are not encouraged to choose industrial zones to build factories. Because of this, even though modern IPs have advantages in terms of location and infrastructure, they have high costs and infrastructure construction costs. This means that land rental prices in IPs are very high, and that's not counting rent, extra infrastructure fees, and other production service fees that conform with the IPs Management Regulations. As a result, enterprises are discouraged from investing in IPs.

Thirdly, there has not been an assurance that the interests of investors will be protected when developing IP technological infrastructure projects. Article 20.3 of Decree 31 provides that: “Investment projects in sectors or trades eligible for investment incentives and implemented in geographical areas with difficult socio-economic conditions are eligible for investment incentives, like investment projects in geographical areas with extremely difficult socio-economic conditions”. Compared to the provisions in Appendices II and III of the Decree, projects on the construction and commercial operation of IP infrastructure facilities by investors of IP infrastructure facilities must be eligible for investment incentives applicable to investment projects located in areas with extremely difficult socioeconomic conditions and tax incentives. However, Law on CIT 2008 has abolished CIT incentives for investors in IP infrastructure facilities. On the other hand, the general recognition of only “enterprise’s income from implementing new investment projects in IPs” and in terms of CIT exemption and reduction in Article 20.3 of Decree 218 without clearly defining infrastructure projects and projects of secondary investors leads to the arbitrary application of state agencies when considering incentives for infrastructure projects and secondary investors' projects.

Fourth, investment incentives are not effective. Currently, the system of investment incentives, particularly tax incentives and CIT, is ineffective and has not been a factor influencing the investment decisions of investors, especially foreign investors. When choosing where to invest, one of the most important considerations for any potential investor is the condition of the high-quality labour market, the infrastructure, the consumer market, and the legal system of the host nation. If the aforementioned issues are not addressed, the state’s investment incentives are ineffective since they just encourage investors to profit from the state's poor management system.

Therefore, investment incentives for IPs should include both financial incentives such as low-interest credit and credit insurance, as well as non-financial incentives such as adopting low-cost infrastructure and services and prioritising market selection. In fact, FDI has been directed more towards labor-intensive and resource-intensive industries, taking advantage of industrial protection policies. While FDI in high-tech industries creates a great deal of value-added, environmental sustainability remains low. The proportion of FDI projects investing in industry-oriented fields such as infrastructure remains minimal. Moreover, new investment incentives only focus on tax incentives and attract foreign investment without promoting domestic investment. This is one of the limitations of foreign investment activities identified by the Ministry of Planning and Investment.

Fifth, there seems to be a reduction in CIT incentives: The Law on CIT 2008 (amending and supplementing in 2013) places an extremely low limit on investment incentives in IPs. That will

only be tax-exempt for 2 years and reduce up to 50% of the tax payable in the next 4 years. According to the provisions of this Decree, enterprises investing in IPs are not entitled to preferential tax rates but only enjoy tax rates equal to the CIT rates of ordinary enterprises. As a result, the aforementioned incentive level is deemed insufficiently appealing for encouraging enterprises to invest. Not only investors, but also local IP Management Boards and the Ministry of Planning and Investment, have consistently called for the restore of IPs tax incentives. However, after the implementation of the CIT Law in 2008, all of the aforementioned incentives have been repealed. As a result, despite their advantages in location and infrastructure, current IPs have high compensation and infrastructure construction costs, resulting in very high land rental prices in IPs, not to mention having to pay rent and additional fees for management services and infrastructure, which should discourage businesses from investing in IPs.

Conclusion, “Vietnam is currently a member of organisations such as ASEAN, APEC, ASEM, WTO, CPTPP, and EVFTA, in harmony with the flow of the world economy” (Hung, N. V, et al., 2022, pp. 01). Therefore, an increasing number of foreign investors are interested in and would like to engage in Vietnam IPs. This necessitates a comprehensive tax and legal framework for enterprises owning investment projects in IPs. In other words, the existence of several limitations and inadequacies in income tax regulations for enterprises owning investment projects in IPs demonstrates that Vietnam’s legal system needs further improvement.

4.4. Some recommendations

Regulations on CIT for enterprises owning investment projects in Vietnam IPs have not established a beneficial environment for investors. In other words, the legal framework and implementation process remain fragmented uneven, and ineffective. This creates obstacles, complications as well as unfavourable conditions for foreign investors seeking to invest or do business in Vietnam.

In recent years, the legal framework regarding investment incentives, particularly tax incentives, has undergone continuous change, which has had a significant impact on investor interests. In addition, disagreement and conflict between legal documents are major issues. When the original regulation (Law on Investment) incentives for investors but is directed by specialist documents, this privilege is revoked. This causes investors to become confused and lose faith in the legal stability of Vietnam. Hence, it's important to come up with incentives based on a policy that is consistent, stable, and has long-term effects. Moreover, review all legal documents and

remove invalid regulations to maintain uniformity and consistency between legal documents. The modification of conditions or specific incentives must ensure the retention of existing investor incentives or the implementation of a selection mechanism for investors. If they meet the requirements for incentives at the new rate, they can choose whether to use the incentives under the new regulations for the rest of the incentive term or the incentives under the old regulations.

In addition, the authors believe that in order to enhance the legislation and the effectiveness of CIT implementation for enterprises owning investment projects in Vietnam IPs, the following remedies must be considered:

Firstly, there should be regulations on investment incentives that are higher in IPs than in the outside area:

Preferential regulations applied to IPs are higher than to outside projects in order to foster the growth of concentrated industrial production, enhance the efficiency of land use and the utilisation of technological infrastructure, and attract investment in IPs. Previously, we created heat in drawing investment in IPs with the provisions on incentives of the Law on CIT 2003. However, as a result of the Law on CIT 2008, as amended and supplemented in 2013, the quantity of investment in IPs has declined, having a significant impact on industrial concentration policy. According to the authors, it is necessary to restore investment incentives for enterprises in IPs, including projects to develop IP infrastructure facilities. These incentives should be at the same level as those in difficult socioeconomic areas at the same level as applied to difficult socio-economic areas in order to encourage the development of industrial production. In addition, other incentives, such as import tax incentives, fixed asset depreciation, and other support, should be given higher incentives for investment projects in IPs.

Furthermore, Vietnam could learn from the experience of other countries in implementing investment incentives. Thailand, for example, has two incentive systems: (i) tax incentives and (ii) non-tax incentives. Thailand applies a number of additional incentives in addition to the preferential content similar to Vietnamese law, including lowering the import tax on raw materials and necessary materials, deducting twice the cost of transportation, electricity, and water, and providing an additional 25% deduction for the cost of construction and installation of the enterprise's infrastructure⁷. On the other hand, Japan is a nation that has implemented policies such as providing financial assistance to businesses, both from the national budget and from the local budget.

Second, it is proposed to eliminate geographical discrimination regulations for investment

⁷ Thailand (1999), *Foreign Investment and Business Law*.

incentives in IPs:

Many preferential policies have been included in the Law on Investment and related documents to encourage enterprises to invest in economic zones with difficult or especially difficult conditions. As a result, regardless of where the park is located, the issue of preferential treatment for IPs should not be raised because our primary goal is to encourage enterprises to invest in IPs. Principles of incentives for IPs are outlined in Decree 82/2018/ND-CP, guiding the classification of incentives to be enjoyed: enterprises in IPs are entitled to incentives, IPs in difficult or especially difficult areas will be given higher incentives. Currently, the central provinces have established a number of IPs, but the occupancy rate is quite low since enterprises continue to operate outside the fence of IPs because it is less expensive and they do not have to pay for the IP infrastructure facilities. Consequently, if there are no incentives for enterprises investing in IPs, such as the Law on CIT 2003, incentives (2 years tax exemption and 50% reduction of the 4 years payable tax amount, Article 16.3, Decree 218) should be considered for all IPs investment projects, regarding of whether the IPs is located in a favourable location, a key economic area, an area with favourable economic conditions, socio-economic difficulties, or an area with especially difficult conditions.

Third, modify investment incentives in order to render them more favourable conditions for enterprises in the construction and commercial operation of IP infrastructure facilities:

IPs have been a major factor in the growth of industrial production and attracting investment, particularly foreign investment. However, infrastructure enterprises current are confronting several difficulties and challenges. The world economy as well as Vietnam, experienced several challenges as a result of the COVID-19 epidemic, which disrupted supply networks in global manufacturing activity. Enterprise activities in general, and company businesses in IPs in particular, have slowed down substantially. In this situation, enterprises investing in construction and commercial operation of IP infrastructure facilities deal with increasing disadvantages as a result of huge investment capital, quite slow recovery, and numerous risk factors. Thus, the authors recommend: reducing lending interest rates; considering lending capital for IP infrastructure investment projects; expanding forms of capital mobilisation for infrastructure enterprises; amending the Decree on CIT in the direction of expanding CIT incentives to support businesses operating in the current difficult economic situation.

Fourth, it is crucial to pay attention to important problems in order to increase the implementation efficiency, such as the following:

Regularly organising tax collection training for IPs enterprises should be prioritised. On the other hand, it is essential to assist and guide enterprises in accurately and fully declaring their tax responsibilities, as well as to execute the tax incentives provided by the state to enterprises in IPs. Furthermore, periodic, regular, and irregular inspection and examination in the implementation of enterprises tax payment obligations in IPs.

5. Conclusion

Around the world and in Southeast Asia, there is tremendous competition to draw in foreign investment capital. Vietnam's legal framework for investment incentives was once regarded favourably, but recently it has fallen behind other nations in the region in terms of competitiveness, particularly when it comes to investment incentives in the IPs. Therefore, preferential and incentive policies should be more aggressive or at least comparable to those of other nations in the region. Therefore, Vietnam enacted the Law on Investment 2020 and finalised the provisions of Decree 82/2018/ND-CP with Decree 35 on the management of IPs and economic zones. Accordingly, the legal framework for investment incentives should be synchronised and compatible. CIT incentives, in particular, must be designed in an appropriate way, avoiding redundant and wasteful incentives while also being sufficient to attract investment and create a clear legal corridor that is synchronous and easy to apply to all enterprises in accordance with international commercial law. It is also the basis for promoting and attracting investment in IPs.

References

- AQIB ASLAM, MARIA CPELHO (2021). “The Benefit of Setting a Lower Limit of Corporate Taxation”. *IMF Blog*, source: [https://seer.ucp.br/seer/index.php/LexHumana/article/download/2598/3528](https://blogs.imf.org/2021/06/09/the-benefits-of-setting-a-lower-limit-on-corporate-taxation/#:~:text=The%20goal%20of%20this%20‘local,amount%20of%20tax%20a%20corporation, accessed: May 26, 2023.</p><p>DOAN HONG NHUNG (2016). “Law on sanctioning administrative violations in the field of environmental protection in industrial parks in Vietnam”. <i>Construction Publishing House, Hanoi</i>.</p><p>DOAN HONG NHUNG (2017). “Law on environmental protection in industrial parks in Vietnam”. <i>Vietnam National University Publishing House, Hanoi</i>.</p><p>DOAN HONG NHUNG (2018). “Law on environmental protection in Vietnam”. <i>Vietnam National University Publishing House, Hanoi</i>.</p><p>DOAN HONG NHUNG (2019). “Law on environmental protection of craft villages in Vietnam”, <i>Vietnam National University Publishing House, Hanoi</i>.</p><p>DOAN HONG NHUNG, NGUYEN VINH HUNG, KHUC THI TRANG NHUNG (2023). “Land use planning of industrial zones in Vietnam towards sustainable development and climate change response”. <i>Lex Humana</i>, Vol. 15, No. 2, source: <a href=), accessed: May 25, 2023.
- ECONOMIC ZONE MANAGEMENT DEPARTMENT - MINISTRY OF PLANNING AND INVESTMENT (2022). “Report on the development of industrial parks and economic zones in 2022”, Hanoi.
- FOREIGN INVESTMENT AGENCY - MINISTRY OF PLANNING AND INVESTMENT (2022). “Report on foreign investment attraction in 2022”. Hanoi.
- GOVERNMENT (2008). “Decree 29/2008/ND – CP dated March 14, 2008 providing for Industrial Parks, Export Processing Zones and Economic Zones”.
- GOVERNMENT (2018). “Decree 82/2018/ND-CP dated May 22, 2018 on management of industrial parks and economic zones in Vietnam”.
- GOVERNMENT (2023). “Decree 35/2022/ND - CP dated May 28, 2022 on management of industrial parks and economic zones in Vietnam”.
- HANOI LAW UNIVERSITY (2018). “State Budget Law Textbook”. *People Police Publishing House, Hanoi*.

- HANOI LAW UNIVERSITY (2020). “Vietnam Tax Law Textbook”. *People Police Publishing House, Hanoi*.
- HUNG, N. V., THINH, T. C., LY, N. T. K. (2022). “General Partnership in the Vietnamese Commercial Environment”, *International Transaction Journal of Engineering, Management, & Applied Sciences & Technologies*, 13(3), pp. 01. <https://doi.org/10.14456/ITJEMAST.2022.57>
- KHUC THI TRANG NHUNG (2022), “Discussing corporate income tax incentives for enterprises having investment projects in industrial parks”, *Journal of Human Resources and Social Sciences*, (106).
- NATIONAL ASSEMBLY (2008), “Corporate income tax law”.
- NATIONAL ASSEMBLY (2019) “Tax management law”.
- NATIONAL ASSEMBLY (2020). “Corporate income tax law”.
- NATIONAL ASSEMBLY (2020). “Law on Investment”.
- NGUYEN MINH HANG (2011). “Public Finance Law Textbook Viet Nam”, *Education Publishing House, Hanoi*.
- NGUYEN THI LAN HUONG (2016). “Tax Law: Theory, History, Reality, and Comparison”, *National Political Publishing House*.
- NGUYEN THI TRANG (2014). “The current law on investment incentives for enterprises in industrial parks, some theoretical and practical issues”, *Master thesis, Faculty of Law, Hanoi National University, Hanoi*.
- NGUYEN VINH HUNG (2020). “Personal Income Tax Law: Some Limitation and Recommendations”, *Journal of Science and Technology*, No.04.
- SB Law (2019). “Taxation for enterprises doing business in Japan”, *vi.sblaw.vn*, source: <https://vi.sblaw.vn/che-do-thue-cho-doanh-nghiiep-kinh-doanh-tai-nhat-ban/>, accessed: May 25, 2023.
- THAILAND (1999). “Foreign Investment and Business Law”.