

TECHNICAL UPDATES

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Corporate Income Tax

Determining taxable income in respect of exchange rate differences

The Ministry of Finance issued Circular No.201/2009/TT-BTC dated 15 October 2009 providing for detailed guidelines on treatment on foreign exchange difference by business enterprises other than those dealing in foreign currencies.

Under the Circular, exchange difference arising from running a business' operations, including construction activities, shall be recognized as part of operating expenses or financial revenue of that business in the period. For a treatment, the Circular provides that

- Exchange difference from revaluing ending balances of cash on hand, in bank, or in transit and short-term loans (one year and shorter) in foreign currency at the balance sheet date shall not enter into the income statement as gain or loss but remain an account in the balance sheet. It shall be eliminated by a reversing entry just as the subsequent accounting period begins.
- Exchange difference from revaluing ending long-term liabilities, including notes and accounts payable, in foreign currency shall be treated as financial revenue or expenses in the income statement upon off-set against related accounts. Where such recognition of exchange difference as expenses could result in a net loss, part of this difference should be deferred for subsequent years but the amount recognized for the current year shall be at least equivalent to the exchange difference of accounts payable incurred in foreign currency in the year. The deferral period shall not exceed five years.

The Circular shall take effect from 29 November 2009.

Change of foreign investor in a foreign invested company of the same group without deriving income shall not be subject to CIT

On 9 September 2009, GDT issued Official Letter No.3678/ TCT-CS providing guidance on CIT regulations regarding change of foreign investor in a foreign invested company.

According to the OL3678, owner of 100 percent foreign invested company established in Vietnam when assigning the management rights of the company in Vietnam to its other subsidiary in the same group, shall not be subject to CIT since this assignment activity does not derive income.

Tax regulations for enterprises having CIT liability increment in the period of entitlement to CIT incentives or exemption

OL 12866/BTC-TCT issued by the MOF dated 14 September 2009 confirmed that enterprises having CIT liability increment in the period of entitlement to CIT incentives or exemption which is discovered through the tax finalization inspection shall not be longer subject to CIT incentives on the CIT liability increment. This OL also confirms that if enterprises either (i) declare the untrue and non-existent expense to increase loss and decrease profit; or (ii) decrease expense to increase profit and determine improperly conditions for CIT exemption in the period of entitlement to CIT incentives or exemption shall be handled in two following cases:

- If the enterprise's violation has been detected in the CIT exempt period, the enterprise will be fined for the violation in tax procedure or administration in accounting field.
- If the enterprise's violation has not been discovered yet but the enterprise itself does not make any adjustment causing the CIT decrement of the next year following the expired period of CIT exempt, this violation shall be considered as a tax evasion and such enterprises will be fined in accordance with the current regulations.

The enterprises who are entitled to CIT incentives or exemption should notice the above regulations to avoid any mistakes leading to violation.

Carrying forward losses incurred before the year of 2007 for enterprises who failed to register for loss carried forward

According to OL 3784/TCT-CS issued by GDT dated 17 September 2009, enterprises are required to make their own plan of carrying forward the losses derived before 2007 and register such losses with tax authority right after the year of loss derivation to be entitled to loss carried forwards.

This OL reaffirms that if enterprises do not register their losses carried forward plan with the tax authority or the losses are not carried forward in accordance with the plan, the enterprise shall not be entitled to the right to carry forward the loss incurred during this period.

Enterprise who has loss carried forward plan should take notice of the registration with tax authority once arising losses and implement in accordance with regulation in order to avoid risk to their own enterprise.

Recording expenses of damaged and lost goods

On 17 September 2009, GDT issued OL No. 3791/TCT-PC, 3792/TCT-PC and 3793/TCT-PC providing guidance on recording expenses of damaged and lost goods.

Accordingly, all expenses of damaged, lost material and goods arising before 1 January 2009 regardless of subjective or objective reasons shall not be recorded as deductible expenses for CIT calculation purpose. Official letter 3793 also reiterates that since 1 January 2009, in accordance with the prevailing regulations on CIT, value of lost goods due to calamity, epidemic and other force majeure shall be recorded as deductible expenses for CIT determination provided that no compensation is made.

Enterprise should pay attention to the above regulation in order to determine the eligible damage and loss of goods for deductibility as required by law.

Guidance on Depreciation Accounting

The Ministry of Finance issued Circular No.203/2009/TT-BTC dated 20 October 2009 guiding the management, use and depreciation of fixed assets applicable for business enterprises established and operating in Vietnam.

Below is the noted difference from Minister of Finance Decision No.206/2003/QD-BTC dated 12 December 2003:

- An enterprise can change the estimated useful life of a fixed asset only once.
- Depreciable items which are left idle and held for disposal shall still be recorded and depreciated like others in use.
- Items in use for the benefit of the business employees shall also be depreciated.

The Circular shall take effect from 01 January 2010.

Value Added Tax

Enterprises are not allowed to deduct input VAT if the invoice is issued after supplying goods and service

On 9 September 2009, the GDT issued OL No. 3669/TCT-KK providing guidance on VAT issues. The noticeable point is that enterprise supplying goods and service are required to issue VAT invoice at the time of delivering goods and service. Otherwise, the buyer shall not allowed to deduct or be entitled to VAT refund but recording this VAT amount as deductible expense in the year of issuing invoice.

The above stipulation is applied for all circumstances of selling goods without VAT invoice issuance at the time of supplying goods or services. Enterprises buying goods or services should note the above guidance to be entitled to input VAT deduction or refund in accordance with the current regulations.

Banks are required to issue VAT invoices when selling foreign currencies

Under the OL 3589/TCT-CS issued by the GDT dated 4 September 2009, all banks are required to issue VAT invoice for the foreign exchange in accordance with the current regulations. Accordingly, selling price is the price of foreign currencies excluded VAT, tax rate and tax payable shall be vacated and crossed out.

For the banking service with the VAT rate of 10 percent, enterprises should request the Bank to issue VAT invoice for these services for the input VAT deduction purpose.

Banks and enterprises when having foreign currency transactions should take notice of the above guidance

to issue VAT invoice in accordance with the current regulations.

Conditions for input VAT deduction of house rental invoices for expatriate employees

On 14 September 2009, GDT issued OL 3720/TCT-CS providing guidance on input VAT deduction of housing rental invoice for expatriate staff assigned from the overseas parent company to work for the Vietnamese company, in particular:

- For the case expatriate employees are assigned to work in Vietnam but still having employment and receiving salary from parent company during their assignment in Vietnam and the assignment letter clearly states that the Vietnamese company is responsible for the housing rental of expense of these expatriates, input VAT of such housing rental shall be fully deductible and refundable in accordance with the current regulations.
- If the Vietnam company having VAT invoices for housing rental for the expatriate employees based on the contract directly signed between the Vietnam company and the employees, this input VAT shall not be deducted and refunded in accordance with the current regulations as these expenses are considered as personal expenses and not relevant to the business activities of the company. Enterprises paying housing rentals for the expatriate employees should take into account the above guidance to declare VAT invoice in accordance with the current regulations.

Labour

Increased scrutiny on management and investigation of foreign labour working in Vietnam

The MOLISA issued Official Letter No.3353/LDTBXH-VL on 9 September 2009 to request Committee of People of provincial level to intensify checking, inspection and management of foreign labour working in enterprises in the provinces.

Accordingly, the inspections shall focus on the employment, work permit issuance, extension of work permit, especially to foreign contractors employing foreign labour. Foreign labours who are not qualified to work in Vietnam shall be forced to leave or be expelled from Vietnam.

The above actions show that competent authorities are enforcing compliance with labour regulations with respect to foreigners working in Vietnam. Enterprises employing foreign labour should take the above regulations into account for full compliance in labour employment, registration and management.

Payroll for Labourers

The Government issued Decree 97/2009/ND-CP and Decree 98/2009/ND-CP dated 30 October 2009 providing for minimum rates of regional wages for laborers.

Under Decree 97, the threshold of minimum monthly wages/salaries to be paid to Vietnamese laborers working for local enterprises, co-operatives, farms and households will be lifted to VND730,000 from VND650,000. This is for those in the region classified as IV and the threshold keeps higher for regions III, II and I at VND880,000 as the highest per month.

Under Decree 98/2009/ND-CP, the threshold of minimum monthly wages/salaries to be paid to Vietnamese laborers doing simplest forms of job in normal working conditions for international agencies, foreign invested enterprises and foreign organizations and individuals in Vietnam's regions classified I, II, III and IV are VND1,340,000; VND1,190,000; VND1,040,000 and VND1,000,000, respectively.

The Decrees shall take effect from 01 January.

Foreign Contractor Tax

Income Tax for foreign entities

The Ministry of Finance issued Circular 197/2009/TT-BTC dated 09 October 2009 providing supplemental regulations to Circular 134/2008/TT-BTC dated 31 December 2008 on tax issues applicable to foreign organizations and individuals doing business or earning income in Vietnam.

◆ For contracts and sub-contracts signed before the date Circular No.134/2008/TT-BTC takes effect, related value added tax (VAT) and corporate income tax (CIT) are still computed in accordance with Ministry of Finance Circular 05/2005/TT-BTC dated 11 January 2005 providing for performance of tax obligations by

foreign entities without a legal status in Vietnam, non-Vietnamese doing business or earning income in Vietnam until such an engagement is completed, except where:

◆ For supply of goods and services defined as non-VAT under the Law on Value Added Tax in effect before 01 January 2009, and as VAT Taxable after 01 January 2009, the revenue of such foreign entities is determined in accordance with Circular No. 134/2008/TT-BTC

◆ For income earned by foreign contractors and subcontractors as individual on and after 01 January 2009, tax obligations shall be performed in accordance with Personal Income Tax (PIT) Law.

The Circular shall take effect from 23 November 2009.

Import – Export Duty

List of Special favoured tariff for the period from 2009 to 2012 for goods from Japan shall take into effect from 1 January 2010.

On 6 August 2009, the MOF issued the Circular No 158/2009/TT-BTC guiding on the implementation of the list of special favoured tariff applied for goods made from Japan. The issuance of the above circular is one of the Vietnamese government's actions to gradually conduct its commitments accordance with the VN-JP Economic Partnership Agreement for the period from 2009 to 2012 (VJEPA) Accordingly, the tariff list attached with Circular 158 clearly states the different tax rate applied for each stage during the period from 1 October 2009 to 31 March 2012 (herein after referred as VJEPA tax rate)

One of the most considerable points is that the imported goods applied VJEPA tax rate are required to meet the following conditions:

- Listed in the attached tariff list
- Imported from Japan into Vietnam
- Directly transferred from Japan to Vietnam under the regulations of the Department of Industrial and Trade
- Qualified under the Vietnam-Japan stipulations of original of goods and supported by the Vietnam-Japan Certificate of Original (herein after abbreviated as C/O – form VJ) under the stipulations of the Department of Industry and Trade.

Enterprises importing goods made from Japan should pay attention to the above regulation for correct application of import duty in the customs declaration.

Personal Income Tax

Deduction of 50 percent PIT applicable for individuals working at EZ on income deriving from 1 January 2009

Under the Circular 176/2009/TT-BTC issued by the MOF dated 9 September 2009, individuals directly working at EZ regardless being Vietnamese or expatriate either resident or non resident shall be entitled to PIT deduction on income derived at EZ from 1 January 2009 onwards. Incomes subject to PIT deduction includes:

- (i) Incomes being salary/wage individuals receiving as directly working or being assigned to work at EZ, regardless the incomes paid by individuals/organisations having business premises inside or outside of the EZ.
- (ii) Incomes from business manufacture activities at EZ of individuals, group of individuals who are licensed at

the EZ.

Note that individuals who contractually work for individuals, organizations having investment and manufacturing activities in EZ but do not directly work at the EZ shall not be entitled to 50 percent off PIT in accordance with this Circular.

Circular 176 also provides guidance on PIT declaration, withholding and finalisation. Note that PIT liability amount after 50 percent off shall be declared on monthly/ quarterly return. Non-resident individuals subject to 50 percent PIT deduction shall not be required to PIT finalisation. Individuals working and being paid for works at EZ; individuals, organizations paying income to individuals working at EZ should take this regulation into account for compliance and your own legitimate benefits.

ABBREVIATIONS

CIT	HI	MOST
Corporate Income Tax	Health Insurance	Ministry of Science and Technology
EPZ	IZ	MPI
Export Processing Zone	Industrial Zone	Ministry of Planning and Investment
FCT	LOE	PE
Foreign Contractor Tax	Law on Enterprise	Permanent Establishment
FDI	LOI	PIT
Foreign Direct Investment	Law on Investment	Personal Income Tax
FIEs	MOF	SI
Foreign Invested Enterprises	Ministry of Finance	Social Insurance
GDC	MOIT	SST
General Department of Customs	Ministry of Industry and Trade	Special Sales Tax
GDT	MOLISA	VAT
General Department of Taxation	Ministry of Labour, Invalids and Social Affairs	Value Added Tax

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