

Technical Update

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VIETNAM

In this issue

Value Added Tax	1
Personal Income Tax	2
Abbreviations	2
Tax Administration	3
Contact us	5

Value Added Tax

MOF guidance on VAT on house building, infrastructure development activities with advance collection of buyers' progress payments as agreed under contracts signed before 1 January 2009

According to Official Letter No. 6992/BTC-TCT dated 18 May 2009 from the MOF, real estate traders, residential housing and infrastructure developers who have collected progress payments from customers before 1 January 2009 and claimed creditable input VAT (or VAT refund) on input materials, goods, expenses used for such real estate trading or housing and infrastructure development activities but have not declared corresponding revenue and output VAT before 1 January 2009, must now issue VAT invoices, declare and pay VAT on the proceeds received before 1 January 2009.

If the above enterprises continue to collect progress payments from customers in 2009, they must issue VAT invoices, declare and pay VAT on the aggregate proceeds received (i.e. both before 1 January 2009 and during 2009). The deadline for declaring VAT on proceeds received before 1 January 2009 is no later than the August 2009 VAT return.

With respect to the VAT assessment price, Official Letter 6992 specifies as follows:

- Where such enterprises are using land entrusted by the State and paying land use right fees to the State, the VAT assessment price shall be the amount collected less such land use right fees.
- Where such enterprises are not using land entrusted by the State, the VAT assessment price shall be the amount collected less the land use right price prescribed by the provincial/ municipal People's Committee.
- Where such enterprises won the land by way of an auction, the VAT assessment price shall be the amount collected less the auctioned price for the land use right.

Enterprises engaged in real estate trading, house building, infrastructure development investment activities should take note of the above regulations for correct VAT declaration and payment.



Timing for notification of change of payment method on import and export activities

On 26 May 2009, the General Department of Customs issued Official Letter No. 3018/TCHQ-KTTT providing guidance on the timing for notification of change of payment method on import and export activities.

Accordingly, in case there is a change in the payment method agreed in the export contract, the exporter must inform such change in writing to the foreign party prior to the original payment deadline stated in such export contract. Notices of change in payment method after the payment deadline will not be accepted by the authority for tax refund/credit purposes.

Enterprises carrying out import and export activities and having changes in payment method should take note of the above requirement regarding the timing for notification of change of payment method, to avoid unnecessary hurdles during tax refund applications later on.

Personal Income Tax

Further clarification on computing taxable income from the agreed net package

According to Official Letter No.1578/TCT - TNCN issued on 28 April 2009 by the GDT, the net income stipulated in the Appendix No. 01/PL – TNCN of Circular 84 dated 30 September 2008, which is used in computing the taxable income, should be the amount excluding Personal Income Tax as well as personal and dependent relief of the tax payer.

On this principle, personal and dependent relief shall be subtracted from the agreed net remuneration before grossing-up for coming up with the taxable income in accordance with the formula stipulated in the Appendix 01/PL-TNCN of Circular 84.

Organisations agreeing with employees on a net package should take note of the above regulations for compliance purposes.

Abbreviations

CIT
Corporate Income Tax

EPZ
Export Processing Zone

FCT
Foreign Contractor Tax

FDI
Foreign Direct Investment

FIEs
Foreign Invested Enterprises

GDC
General Department of Customs

GDT
General Department of Taxation

HI
Health Insurance

IZ
Industrial Zone

LOE
Law on Enterprise

LOI
Law on Investment

MOF
Ministry of Finance

MOIT
Ministry of Industry and Trade

MOLISA
Ministry of Labour, Invalids and Social Affairs

MOST
Ministry of Science and Technology

MPI
Ministry of Planning and Investment

PE
Permanent Establishment

PIT
Personal Income Tax

SI
Social Insurance

SST
Special Sales Tax

VAT
Value Added Tax



PIT exemption on all monetary allowance items received from the Social Insurance Fund

Pursuant to Official Letter No. 1697/TCT-TNCN issued by the GDT on 7 May 2009, all monetary allowance items that a Vietnamese employee receives from the Social Insurance Fund are tax free and must be deducted from the income of that employee for PIT purposes. Common allowances that a Vietnamese employee would receive from the Social Insurance Fund include:

- subsidies for one-off difficulties, subsidies for labour accidents and occupational diseases
- one-off subsidies on the birth or adoption of a child
- subsidies due to reduction in ability to work
- one-off subsidy on retirement, monthly widow's subsidies
- retrenchment or loss of work subsidies, unemployment subsidies
- other subsidies paid by the Social Insurance Fund.

Enterprises with staff receiving incomes paid by the Social Insurance Fund should take note of this tax treatment when determining their PIT liability.

Tax Administration

Standard procedures for tax inspection issued

On 5 May 2009, the GDT issued Decision No. 460/QD-TCT to announce regulations on tax inspection procedures.

Accordingly, to conduct an inspection, the authorities must announce their Decision of Tax Inspection to the concerned enterprises within 15 working days from the date of such Decision. In addition, prior to announcing such Decision of Tax Inspection, the chief inspector must inform the concerned enterprises, by telephone or in writing, regarding the time, the team members, and the place of announcement of such Decision.

A tax inspection generally shall not last more than 30 days from the date of announcement of the Decision. If it is necessary to extend an inspection within 5 working days prior to the last date of the tax inspection period stated in the Decision, the head of the local tax authority must issue a decision of tax inspection extension. Each inspection may only have one extension, which itself could not last more than 30 days.

For the tax inspection purposes, the tax inspectors are allowed to obtain information relating to a tax payer from all legitimate sources, such as the database of the tax office, database of the financial authorities and of other relevant authorities, claims of tax evasion/fraud, etc.

Though not stated in the Procedures, in practice, enterprises usually picked up for tax inspection are those of high profile, having larger revenue, conducting multi-business activities, having major cross border transactions, etc.

Decision 460 came into effect from 5 May 2009. Enterprises, especially those under the categories mentioned above, should maintain a proper accounting system, keep all supporting documentations in place to better facilitate any future tax inspection that may come their way.



More stringent check on expatriates working in Vietnam

According to Official Letter No. 1504/LDTBXH-VL issued by the MOLISA on 11 May 2009, in the coming months, the MOLISA will co-ordinate with provincial/ municipal People's, Police Department, Department of Investment and Planning, Justice Department, Inspection Department, Management Boards of industrial zones, processing zones, economic and high tech zones and other related authorities to organise a thorough check on expatriates working in enterprises/ organisations in all provinces and cities. The check will centre around the compliance with requirements on expatriate recruitment and employment, work permit, professional license, report on employment of labourers, etc.

The above move indicates that the authorities are becoming more stringent on the management of expatriates working in Vietnam. For compliance purposes, expatriate individuals working in Vietnam need to pay more attention to having in place their valid work permit, professional license (where applicable), fully declaring and paying tax on incomes derived from either inside and outside Vietnam if they are a tax resident. On the part of employers, they should pay more attention to compliance with regulations on recruitment and employment of foreign labour, submit statutory reports on foreign labour status, etc.

Departure from Vietnam denied on grounds of non-fulfillment of Vietnam tax obligations

According to Official Letter No. 1850/TCT-PC dated 18 May 2009 by the GDT, taxpayers who have not fulfilled their Vietnam tax obligations could be stopped at the Immigration Counter when travelling out of the country.

While this regulation is not new, the above move shows that the tax authorities are becoming more stringent in enforcing tax compliance, and the coordination between the tax office and the immigration police is increasingly tightened. In this respect, it is imperative that expatriates who are about to leave the country upon the expiry of their Vietnam assignment clear all their tax obligations before leaving, to avoid any inconvenience at the border gate.

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