



TAX AND CORPORATE SERVICES

Technical Update

VIETNAM

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Corporate Income Tax

Deductible expense from loan in relation to fixed asset of land use right

Official letter No. 3207/TCT-CS dated 6 August 2009 issued by the GDT differentiates two (2) specific scenarios of determining interest expense from internal loan among shareholders to obtain fixed asset of land use right. Accordingly:

If the interest arises from the loan for obtaining land use right for the purpose of charter capital contribution or for settlement off the rest of charter capital, it will be not recorded as deductible expense.

On the contrary, if the interest arises from the loan to make payment for obtaining land use right to construct infrastructure, the expense shall be added into original price of fixed asset (i.e. land use right) until the time of completion of site filling moving forward to construction of on-land works. The expense from loan interest arising afterwards is recorded as expense of production and business of the period.

Enterprises should take notice of the above guidance to determine the deductible expense appropriately.

CIT incentive in land use right transfer

Official letter No. 3480/TCT-PC dated 25 August 2009 issued by the GDT reaffirms and specifies the required conditions of enterprises for being entitled to CIT incentives from the transfer of land use right, land lease right.

Accordingly, the following conditions are required to be met:

- licenced to operate in the field of investment and development of infrastructure and residential houses
- obtained with Investment License or Incentive Investment Certificate before 1 January 2004
- assigned land by the State or having land use right before 1 January 2004 for the purpose of infrastructure construction and development of residential house.

Enterprises doing business in real estate should notice the above regulation to properly identify CIT incentive for their enterprises.

Value Added Tax

Input VAT refund on purchased goods Export Processing Enterprise

On 12 August 2009, GDT issued Official Letter No. 3288/TCT-KK guiding the conditions for input VAT refund applied for purchased goods of EPE for the VAT declared and remitted to State Budget for the period from 4 June 2007 to 10 May 2008.

Under the current tax regulations, goods purchased by EPE from overseas are not subject to import duty as well as VAT and goods exported to EPE by domestic individuals or organisations shall be entitled to export duty at 0%. Therefore, in case when EPE imports from overseas and has paid Import Duty and Import VAT to Customs Authorities; and when EPE purchases goods, services from domestic enterprises and has paid VAT, the EPE shall be entitled to input VAT refund provided meeting the following conditions:

- having legitimate VAT invoices when purchasing goods, services from domestic enterprises, Tax Office shall inspect the Buyers on their tax declaring and paying status of such invoices.
- having documentation of VAT payment of imported goods.
- having application dossiers for refund on either paid VAT amounts when purchasing goods, services from domestic enterprises and paid import VAT amounts when importing.

In addition, domestic individuals and organisations shall be refunded appropriate input VAT and overpaid output VAT amount (if any) when exporting goods for EPE.

Therefore, EPE purchasing goods from domestic enterprises and domestic enterprises exporting goods to EPE should take into account the above regulations for their legitimate benefit accordingly.

VAT on import goods which is recollected shall not be entitled to input VAT refund

Under the Official Letter No. 3380/TCT-KK issued by GDT on 18 August 2009, in case enterprises import goods and wrongly declare tax code of import goods, which is discovered by customs department, then the above recollected VAT amounts shall not be entitled to input VAT refund. Also, the enterprises may be subject to customs administration penalties if having the incorrect declaration again in spite of the instructions of the customs department.

Enterprises importing products should pay attention to tax declaration and payment on the right tax code of product in order to avoid any risks of wrong declaration leading to under-declaration.

Input VAT of Fixed assets of Credit Institutions used for both taxable VAT and non-taxable VAT activities are fully deductible

Under the OL 3515/TCT-CS issued by GTD dated 27 August 2009, input VAT for fixed asset of Credit Institutions used for both taxable VAT and non-taxable VAT activities are fully deducted input VAT.

However, input VAT for fixed assets such as offices and other specialised equipment used for operation of credit institutions, enterprises carrying out reinsurance, life insurance, securities business establishments, hospital, etc. shall not deducted input VAT but shall be included in the original cost of the fixed assets.

Credit Institutions, enterprises carrying out reinsurance, life insurance, securities business establishments, hospital, etc. should pay attention to the above guidance and act accordingly in comply with the current regulations.

Issuing VAT invoice upon instalments from selling and transferring real estate according to schedule

On 6 August 2009, the GDT issued Official Letter No. 3208/TCT-CS providing detailed guidance on the VAT invoice issuance when collecting instalments from sale and transfer of real estate as scheduled. Accordingly, enterprises operating in real estate, in construction of infrastructure, house for sale and transfer by instalments in accordance with project implementation schedule or payment schedule indicated in contract are required to issue VAT invoice stating the following details of (i) Turnover for VAT calculation; (ii) VAT rate; (iii) VAT amount

Land prices subtracted for VAT turnover calculation shall be based on the ratio (%) of amount of instalments as scheduled to the actual land prices at the time of transfer (i.e. the time of first instalment by scheduled).

A noteworthy point is the previous regulation on VAT did not require enterprises to issue invoice and make VAT declaration when collecting instalments, this amount is treated as deposit or advance payment.

Enterprises in real estate business should notice the above guidance to avoid the improper VAT invoice issuance.

Personal Income Tax

Not considered as qualified dependants for brother/sister or grand nephew/niece still having parents in working age and having income

Under the OL No. 3202/TCT-TNCN issued by the GDT dated 5 August 2009, if the dependants are brothers or sisters (or grand nephews or nieces) of the tax payers but these dependants are still having their parents in working age and having income, they shall not be considered as qualified dependants for the tax payers.

The income-paying bodies and individuals should pay attention to the above guidance to declare family relief in accordance with the current regulations.

Guidance on PIT imposed on winners of prize based games at the amusement and entertainment locations with prizes

On 13 August 2009, the MOF has just issued Circular No. 164/2009/TT-BTC (Circular 164) providing detailed guidance on PIT imposed on winners of prize based games at the amusement and entertainment locations with prizes.

Accordingly, this Circular providing the method to determine PIT imposed on prizes at amusement locations, in particular, the determination of PIT liability for the player shall be applied for each set of game and the income-paying body is required to determine the income from winning the game of the player in a set of game. Accordingly, PIT to be deducted shall be the income from winning the game which is over VND10,000,000.

Circular 164 also stipulates that individual having income from winning the games shall not be entitled to PIT registration but the income-paying bodies are required to deduct PIT payable prior to paying the income for the winner. However, under the tax payers' requirement, the income-paying bodies shall issue tax receipts for the tax payers under the current regulations.

Under the Circular, the players are required to change all their tokens for their cash before getting out of the amusement locations to help the income-paying body have the basics to determine the winners' PIT liabilities. Business of games with prizes must comply with the regulations regarding procedures of tax registration, tax declaration, tax payment and tax finalisation under the current regulations.

Abbreviations

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

Tax Management

Adjust the method for calculating the maximum collection of mandate fee not exceed 8% for agricultural land use tax, housing and land tax and tax paid by the presumption method and not exceed 1% for PIT

On 6 August 2009, the Ministry of Finance issued the Circular 157/2009/TT-BTC modified Circular 60/2007/TT-BTC dated 14 June 2007 providing guidance on the implementation of the law on tax administration.

Accordingly, the head of the tax agency shall decide on an appropriate collection mandate fund which must not exceed 8% of the total tax amount collected by the mandated party for agricultural land use tax, housing and land tax and tax paid by the presumption method, (including VAT, PIT for family-business and individual)

As for PIT, the head of the tax agency shall decide on an appropriate collection mandate fund which must not exceed 1% of the PIT (not including PIT for individual having income from business and paying tax by the presumption method).

Circular 157 comes into force from 21 September 2009 (i.e. 45 days from the signing date). Enterprises and individuals should pay attention to the above guidance and act accordingly in accordance with the current regulations.

Import – export

On 17 August 2009, The MOF issued the Decision No.1636/QD-TCHQ providing detailed guidance on the procedure of assessment of value for taxation of export and import goods. Below are the key points underlined:

- Instruction on the procedure of checking declared price of goods, on consultation and determination of the taxable value of exported and imported goods. The principles and contents of inspection, consultation and determination of the taxable value are now reaffirmed in accordance with Circular No. 40/2008/TT-BTC issued by the MOF dated 21 May 2008.
- Regulations on consultation customs valuation which clearly indicates cases requiring compulsory inspection includes (i) export and import goods in the risk-management goods list of which price are not mutually consistent and of which method of price determination is defined by custom staff ; (ii) goods outgrouped from the risk-management list but classified as main goods requiring supervision at the office.
- Time of issuance for decision of deemed tax payable by the Branch of Customs must be on the same date or on that of receiving the confirmation of value determination granted by the Department of Customs, which is not later than the next working day.

Decision 1636 become effective since 1 September 2009 (15 days after the signing date of document) and replace the previous Decision 1636/QD-TCHQ issued dated 4 August 2008 regarding testing, measuring taxable price for export and import goods. Enterprises should pay attention to above guidance for proper compliance.

Investment – Commerce

Medicine treated for human shall be used as promoted goods for entrepreneurs operating in medicine business

On 6 August 2009, the Government has issued Decree No. 68/2009/ND-CP which revised item 7, article 4 Decree No. 37/2006/ND-CP regarding trade promotion activities in health area. Accordingly, medicine treated for human shall be used as promoted goods applicable for entrepreneurs operating in medicine business from 1 October 2009 onwards.

However, the Decree does not clearly mention on the limitation, requirement and conditions for the entrepreneur operating in medicine business to apply the above promotion program. We will continuously update on any development regarding the above issue.

Declaration of imported chemicals

Dong Nai Customs Department has issued Official letter No. 2076/QHDNa-NV dated 24 August 2009 guiding the declaration of imported chemicals applicable to organisations and individuals being involved in importing chemicals which are in the list of chemicals to be declared.

Accordingly, the declaration is required to be directly made in writing to Chemicals Agency of the Ministry of Industry and Trade within a period of 15 working days since the date of customs clearance of imported chemicals. Confirmation on declaration of imported chemicals issued by the Chemicals Agency is one required condition for organisations, individuals to implement the import of the next chemicals consignment;

OL 2076 also clearly stated that enterprises are allowed to declare the imported chemicals on the basis of each imported contract, the declaration of the imported chemicals shall be proposed to be implemented at 03 set places: Chemicals Agency in Hanoi, Representative office of Chemicals Agency in Da Nang and in Ho Chi Minh City.

Enterprises having the activity of importing chemicals should take the above regulations into account for duly implementation.



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