KPMG

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Technical Update

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VIETNAM

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Corporate Income Tax (CIT)

New definition of small and medium size enterprises issued

On 30 June 2009, the Government issued Decree No. 56/2009/ND-CP stipulating support measures for small and medium sized enterprises.

Of note, Decree 56 provides new definition of small and medium sized enterprises where SMEs are classified into three levels: extra small, small and medium sized, based on their capital or average number of employees, particularly:

Size / Sectors	Extra small enterprises	Small sized enterprises		Medium sized enterprises	
	Number of employees	**Total capital**	**Number of employees**	**Total capital**	**Number of employees**
I. Agriculture, Silviculture and Aquaculture	10 or less	VND20 billion or less	Over 10 to 200	Over VND20 billion to VND100 billion	Over 200 to 300
II. Industrials and Construction	10 or less	VND20 billion or less	Over 10 to 200	Over VND20 billion to VND100 billion	Over 200 to 300
III. Trading and Services	10 or less	VND10 billion or less	Over 10 to 50	Over VND20 billion to VND50 billion	Over 50 to 100

Currently, it is not clear if the definition of small and medium sized enterprises under Decree 56 would replace that under Circular 03/2009/TT-BTC dated 13 January 2009 of the MOF on CIT reduction and CIT payment deferment for Q4/2008 and 2009; and if this is the case, it is also unclear whether the definition under Decree 56 would have retroactive effect to enable more SMEs to enjoy CIT incentives under Circular 03.

We will follow up on this issue and keep you updated of any further development thereof.

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Dependent accounting units not required to declare CIT locally

Official letter No. 2742/TCT-CS dated 3 July 2009 of the GDT reiterates the provisions of the Law on Tax Administration that in case a corporate tax payer has dependent accounting units, such dependent accounting units are not required to make separate CIT returns locally. Rather, the corporate headquarters shall be responsible for making centralised CIT filings to include the CIT obligations arising at the dependent accounting units.

Enterprises having dependent accounting units located in locations different from that of the headquarters should note the above regulations for proper CIT declaration.

How to record deductible promotion expenses

Official Letter No. 2628/TCT-CS dated 30 June 2009 of the GDT provides two specific methods for recording promotion expenses.

Accordingly, where an enterprise has already reflected the sale promotion discounts directly on the invoiced prices (i.e. effectively reducing revenues), such promotion costs shall not be allowed to be recorded as deductible for CIT purposes. Otherwise, promotion expenses will be allowed as deductible expenses subject to the statutory 10% cap.

Of note, OL 2628 confirms that one prerequisite condition for promotion expenses to be recognised is that the promotion activities comply with all relevant regulations on promotion.

Enterprises should take note of the above requirements to select the most proper method for tax purposes. It is equally important to comply with other relevant regulations on promotion (e.g. the requirements to register a promotion program under the Commercial Law, etc) to ensure the expenses are tax deductible.

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

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Value Added Tax (VAT)

Guidance on creditability of input VAT for transactions valued from VND 20 million and above

On 20 July 2007, the MOF issued Official Letter No. 10220/BTC-TCT providing clarifications on the requirement of making payment by bank transfer for transactions valued from VND20 million and above for VAT credit or refund purposes.

According to OL 10220, the following are also considered as payment via bank transfer for VAT credit/ refund purposes:

- Payment by check, payment orders, bank cards.
- Balance payment method, payment by way of borrowing or lending goods, if such payment method is agreed in the contract and there is data reconciliation and confirmation minutes signed by both parties validating the payment.
- Debt balance method, i.e. payment by netting off debts or debt balance via a third party, if such payment method is agreed in the contract and there is a loan contract as well as evidence of money remittance from the lender's account to the borrower's account.
- Authorised payment via a third party who will make payment via bank transfer, where such arrangement is agreed in the contract.
- In case of sale and purchase of goods via deferment or installment payment schemes, enterprises will still be allowed to claim input VAT credit. When the payment becomes due and there is no evidence of payment by way of bank transfer, the corresponding VAT amount already claimed will be excluded and the enterprise must prepare adjusted VAT return to reflect the disallowed amount.
- Internal payments between a company and its branches or among affiliates within the same group, which have no bank transfer evidence.

OL 10220 also clearly states that the fact that a buyer deposits cash into the seller's bank account shall not be seen as payment via bank transfer. However, for transactions made between 1 January 2009 and 31 March 2009 included, such payment method will be allowed as eligible for VAT credit purposes.

Enterprises should pay attention to the above regulations for VAT purposes.

Credit institutions sale of loan secured assets now subject to VAT

According to Official Letter No. 2918/TCT-CS issued on 16 July 2009 of the GDT, from 1 January 2009, the sale of loan secured assets by credit institutions shall be subject to VAT. Accordingly, when selling loan secured assets, credit institutions must issue VAT invoices, declare and pay VAT as required by regulations.

Though the OL does not clearly state the applicable VAT rate for the above activity, pursuant to current VAT Law it should be subject to 10% VAT rate.

Credit institutions should take note of the above regulation for proper compliance.

VAT reduction applied to all stages of the value chain

According to Official Letter No. 10219 dated 20 July 2009 issued by MOF, the VAT reduction during 2009 for selected items of goods under previous normative documents shall apply consistently at all stages of the value chain including the importing, manufacturing, processing and trading stages.

Enterprises trading in goods, services entitled to VAT reduction pay attention to this guidance which is in their favour.

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Personal Income Tax (PIT)

Guidance on PIT regime applicable to insurance agents

On 20 July 2009, the GDT issued Official Letter 2965/ TCT-TNCN providing guidance on tax code issuance, PIT deduction and finalisation for individuals working as insurance agents. Below are the key points:

- Insurance agent individuals who have not obtained their tax code must proceed to obtain one in 2009. Late issuance of personal tax code will still enable such individuals to claim family relief deduction for the whole 2009.
- The absence of the tax code of insurance agent individuals currently should not negatively affect the monthly PIT deduction, as the insurance company is responsible for withholding, declaring and paying tax for insurance agents on a monthly basis. Insurance agents are not required to declare monthly PIT. They only need to carry out year-end tax finalisation if applicable.
- In case an insurance agent individual must carry out year-end tax finalization, he/ she can choose to submit to PIT finalisation return with either the tax office managing the insurance company or tax office of the district where he or she resides.
- Insurance companies must issue the PIT withholding receipt to insurance agents once at the end of each year, stating clearly the total amounts of commission paid and tax paid during the year, so that the agents can carry out their own PIT finalisation or PIT refund claims. For agents who leave the company during the year, the tax withholding receipts shall be issued for the period from the beginning of the year up to the terminating month.

Insurance companies and insurance agent individuals should note the above guidance and comply accordingly.

Personal Income Tax applicable to founding individuals of enterprises

According to OL 7083/BTC-TCT dated 22 May 2009 of the MOF, profits of an enterprise established by individuals, after paying Corporate Income Tax and fulfilling other financial obligations as required by laws and the Company's Charter, shall become the distributable income for its shareholding individuals. This income is taxable income on the part of the shareholding individuals, as follows:

- If the shareholding individuals cash out the income, they will be required to declare and pay PIT on income from capital investment, at the rate of 5%.
- If the shareholding individuals use the income to increase the charter capital of the enterprise, they will not be required to pay PIT at this point. Rather, they will pay PIT on income from capital investment, at the rate of 5%, when they sell the enterprise at a later day or when the enterprise ceases its operation.

Individuals who make capital contribution into enterprises should pay attention to the above guidance.

Labour management

Increased scrutiny on foreign labour management in Hanoi

On 10 July 2009, the People's Committee of Hanoi City issued OL 97/KH-UBND regarding increased scrutiny on foreign labour management working in Hanoi.

Accordingly, the People's Committee of Hanoi City will co-operate with other government agencies to enhance the management of foreign labour, with the three main activities being:

- Reviewing, updating the list of enterprises employing foreign employees, the list of foreigners working in Hanoi as at 1 July 2009, and analysing enterprises' employment of foreign labour in Hanoi, in both quantity and quality of labour. This activity is scheduled to be completed in mid-2009.
- Providing training from 1 to 15 August 2009, propagandising the Labour law and related issues regarding foreign labour management and employment to enterprises employing foreign labour.
- From August to October 2009, the Department of Labour, War Invalids and Social Affairs of Hanoi will co-operate with other government agencies to inspect the compliance of these enterprises, focusing on enterprises with a record of lower levels of compliance, enterprises employing large number of foreigners for simple work, and foreign workers being Chinese labourers.

The above actions show that competent authorities are enforcing compliance with labour regulations (e.g. work permit requirement, etc) with respect to foreigners working in Vietnam.

Enterprises employing foreign labour, especially those operating in Hanoi, should pay particular attention on the compliance with regulations on the employment and retention of foreign labour.

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Import – Export Duty

Customs value for Import Duty assessment purpose

General Department of Customs ("GDC") recently issues Official Letter No. 4190/TCHQ-KTTT dated 14 July 2009 providing further explanation on queries which provincial customs authorities have faced during their assessment of customs valuation. There are several significant issues that companies should pay attention to, of which the ruling underlines the use of customs database and other sources to reach proper customs value of imported goods. For the same purpose, the ruling also mentions the process of "consultation on customs valuation" where importer may have opportunity to explain and submit more relevant information to support the truth and accuracy of the declared value and to defend his/her position. When importer fails to do so, customs office shall impose a value for duty purpose for the goods in question.

Notwithstanding the above, a list of risk-management goods, including but not limited to automobiles and durable consumer products, which is issued by General Department of Customs and lists of focused-management goods which are often formed and customised by local customs authorities would be applied by the customs for comparison and examination of a declared value of imported goods. Although a reference list is prohibited to achieve customs value, it seems implied that customs authorities will determine whether an assessment of customs value, in reference to their findings from those lists, is necessary.

If price of imported goods is declared less than up to 5% compared to the customs' price databases, the goods might be considered safe for duty assessment. Meanwhile, if an imported goods is declared more or less than 10% the corresponding price stated in the database, local customs authorities must update their database. This means that when price of imported goods is less than 10% of that in the database, the goods will be put in hazardous area and more doubted by the customs.

Tax Administration

Penalty for tax breaches

On 17 July 2009, the GDT issued Official Letter No. 2939/TCT-CS providing certain guidance on how to handle the various levels of tax breaches.

OL 2939 reiterates the violation behaviours under the tax laws including:

- Breach of tax procedure regulations
- Delay in tax payment
- False tax declarations resulting in understatement of tax liability or overstatement of tax refund amounts
- Tax evasion, tax fraud

For the acts of breach of tax procedure regulations, each aggravating or mitigating circumstance shall result in a 20% increase or decrease of the average penalty level.

For the acts of making false declarations resulting in understatement of tax liability, even if the acts are repeated, the monetary penalty would remain at 10% of the under-declared tax amounts plus fine for late payment only.

It can generally be construed that the aggravating or mitigating circumstance would largely depend on the interpretation and judgement of the tax authority on a case by case basis.

It is obvious that recently the tax authorities have been issuing a large number of guidelines and notices on tax management, inspection and how to deal with penalties. These show the trend that the authorities are increasingly enforcing compliance with the provisions of the Law on Tax Administration.

Enterprises should care to improve, strengthen the tax compliance affairs for their own good.

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