

Technical Update

June 2009

VIETNAM

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Corporate Income Tax

Incentives applicable to tax liability increments as a result of adjustments made by tax inspectors

According to Official Letter No. 2093/TCT-CS issued by the GDT on 29 May 2009, in case the tax authority carries out a tax inspection and adjusts to increase the CIT liabilities of an enterprise that is in the period of enjoying CIT incentives, such tax increments will be treated as follows:

- If the enterprise is in its tax exemption period, the adjusted tax increments shall still be exempted, but the enterprise will be subject to administrative fines
- If the enterprise is in the period of enjoying its preferential tax rate, the adjusted taxable income shall still be taxed at the preferential tax rate, but the enterprise will be subject to administrative fines
- However, if the enterprise is in the period of enjoying CIT reduction, the adjusted taxable income shall not enjoy the tax reduction. As a result, the adjusted income shall be taxed in full plus administrative fines. It is important to note that although the adjusted income is taxed in full, it will be taxed at the preferential tax rate where appropriate.

Enterprises, especially those that are undergoing or expecting a tax inspection should take special note of the above regulation.

Tax imposed on differences due to revaluation of fixed assets

On 25 June 2009, the GDT issued Official Letter No. 2572/TCT-CS to reiterate the tax treatment on income earned from the difference of value due to revaluation of fixed assets earlier regulated under Official Letter 8819/BTC-TCT dated 29 July 2008 of the MOF.

Accordingly, when an enterprise revalues its fixed assets for the purposes of making capital contribution into a joint-venture, or transfer of fixed assets as part of a corporate separation, divestiture, demerger, consolidation, merger, conversion, the difference between revalued amount and the net book value of an asset item shall be treated as follows:



- If the asset revaluation is for the purpose of making capital contribution into a joint venture, the difference amount will be seen as other income of the enterprise for CIT purposes, and this income will be amortised over the remaining useful life of the assets
- If the asset revaluation is for the purpose of asset transfer as part of a corporate separation, divestiture, demerger, consolidation, merger, conversion, the difference amount will be recorded as other income of the enterprise for CIT purposes
- The recipient enterprise is allowed to claim depreciation based on the revalued cost base of the assets.

Of note, prior to the issuance of Official Letter 8819, the revaluation of fixed assets for the purpose of making capital contribution into another entity was not a taxable event. When Official Letter 8819 came into existence, any difference due to revaluation of assets for capital contribution purpose becomes taxable income on the part of the enterprise.

Enterprises who have performed asset revaluation for the above purposes since the latter half of 2008 should take note of the above tax treatment.

Obligation to declare and pay CIT at the project-based locality for income arising from transfer of land use right (LUR) and transfer of land lease right

According to Official Letter No. 2121/TCT-KK dated 1 June 2009 of the GDT, enterprises earning income from the transfer of LUR, transfer of land lease right in provinces different from that of the location of their headquarters must declare and pay CIT to the local tax office where the project is located and the transaction takes place. The tax filing and payment documents at the project location will be referred to when the enterprise carries out tax finalisation at the head quarters.

In case an enterprise already declared and paid CIT where it is headquartered, it is required to take actions to revise the tax returns and make adjustments to the CIT liabilities in accordance with the above guidelines.

Enterprises who have income from the transfer of LUR, transfer of land lease right should take note of the above guidelines to determine the right place for CIT declaration and payment in this respect.

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

Value Added Tax

Deferred VAT payment up to 180 days for imported goods to form fixed assets

On 22 June 2009, the MOF issued Official No. 8882/BTC-TCHQ to all local Customs Departments stipulating that goods being machinery, equipment, spare parts, specialised means of transport that are part of technological lines which are not domestically produced, imported to form fixed assets under customs declarations made between 1 May 2009 and 31 December 2009 would be entitled to VAT payment deferment for up to 180 days, if they meet the relevant conditions set out under the Law on Tax Administration.

One of the conditions is that such enterprises must have been conducting import, export activities for at least 365 days as of the date of the customs declarations in question. However, OL 8882 provided a concession that those enterprises with a history of less than 365 days would still be entitled to the above VAT payment deferment, provided that they meet all other conditions.

The above concession treatment from the MOF should be noted by companies that carry out import for their fixed assets.



Personal Income Tax

Extension of deadline for registering taxpayers' dependants up to 31 December 2009

On 29 June 2009, the GDT issued an Express Letter No. 40/TCT-VP requesting all local tax authorities to extend the deadline for registering taxpayers' dependants and submitting dependant supporting documents to 31 December 2009 inclusive. This applies to income-paying bodies and resident individuals having income from business and salary and having claimed to have dependants in tax year 2009.

Income-paying bodies and working individuals should note the above extension and act accordingly.

Allowances payable to employees in case of corporate restructuring and liquidation

On 18 June 2009, the MOLISA issued OL 2115/LDTBXH-LDTL providing guidance on allowances payable to employees in case of corporate restructuring and liquidation, as follows:

- In case an enterprise dissolves one or more of its functional departments as a result of its restructuring and regular employees having worked for one year or more become redundant, the enterprises must first re-train these employees and assign new jobs for them. If a new job cannot be created, the enterprise must pay termination allowances to each redundant employee, which equal one month's salary for each year of service, with two months' salaries being the minimum.
- On the other hand, in case of liquidation of the entire enterprise, the enterprise will only have to pay severance allowances to its employees, which equal half a month's salary for each year of service, plus other allowances (if any).

Enterprises undergoing restructuring should take note of the above guidance for proper compliance in labour issues.



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