

Technical Update

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VIETNAM

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Corporate Income Tax (CIT)

GDT's interpretation of "principal" concept in a tax treaty

On 9 March 2009, the GDT issued Official Letter 771/TCT-HTQT providing some insight into the basis for determining CIT liabilities under tax treaties.

Particularly, OL 771 provides Vietnamese taxation policy for a specific case of alienation of capital interest under a specific tax treaty. Under a conventional tax treaty, "Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State".

Of note, OL 771 clarifies the Vietnamese tax authorities' view on the concept of "principal" as stated in a tax treaty in the above context, which is construed to be more than 50% of the total asset value of an enterprise at the time of the transaction. This percentage appears

in conformity with the guidance of the Organisation for Economic Cooperation and Development (OECD).

The above guidance can be important for applicable taxpayers when determining the right to claim tax exemption under tax treaty protection in many circumstances, especially the alienation of capital and shares.

Value Added Tax (VAT)

Guidance on hotel services entitled to 50% VAT reduction

On 18 February 2009, the Ministry of Finance issued Official Letter 1811/BTC-TCT to clarify the scope of application for certain services that would be entitled to 50% VAT reduction under Circular 13/2009/TT-BTC.

Accordingly, hotel businesses entitled to 50% VAT reduction rate include VATable services provided to travellers, lodgers by one to five star ranked hotels (including brick-and-mortar built hotels, floating hotels, business hotels, resorts), guesthouses, motels, hostels, and boarding-houses.

It is important to note that the VAT reduction does not apply to services subject to Special Sales Tax and the activities of leasing out offices, shops, commercial centres by a hotel.

Enterprises with hotel operations should note the above guidance for proper application of effective VAT rates for various services during the 1 February 2009 to 31 December 2009 period.

Proof of payment via a bank for purchases from VND20 million or more

On 20 March 2009, the Ministry of Finance issued Official Letter 3046/BTC-TCT to provide more guidance on the proof of payment via a bank for purchases from VND20 million or more for the purpose of claiming VAT credit, refund.

Accordingly, proof of payment via a bank is understood to be evidence of bank remittance from the buyer's account to the seller's account opened at a payment service provider, in forms of payment allowed under the laws.

Official Letter 3046 also makes it clear that the following proof is not accepted:

- Evidence that the buyer has made a cash deposit into the seller's account.
- Other type of payment in forms not recognised under the laws.

Generally all businesses should be aware of the above regulation for the purpose of claiming creditable input VAT.



Personal Income Tax

Instructions on how to prepare PIT returns from 2009

On 9 March 2009, the GDT issued Official Letter 778/TCT-TNCN providing detailed guidance on how to complete PIT returns prescribed by Circular 84/2008/TT-BTC.

The Human Resource function of income-paying entities and individuals who directly declare PIT at the tax office should study the above instructions to ensure tax filings meet the requirements of the tax authority.

Relaxed requests on certain routine documents for personal tax code registration

With an aim to reduce the burden of bureaucracy on individuals when registering for a personal tax code, on 6 March 2009, the GDT issued Official Letter 770/CT-TNCN confirming the way to handle certain particular circumstances as follows:

- Expired ID cards under the Ministry of Police regulations can still be accepted by the tax office, on the condition that the individual will submit a copy of the new ID card to the tax office as soon as they obtain one.
- Different resident addresses between the tax code registration form and the ID card can now be accepted by the tax office, with the individual being responsible for the authenticity of the declared information. Information on the tax ID card will be based on that provided in the submitted tax code registration form.
- In addition, the GDT also requested all local tax authorities to draw up and announce detailed plans on receiving tax registration documents to all income-paying entities in their jurisdiction, to avoid inconveniences caused to taxpayers.
- The granting of personal tax codes will be made in the following order of priority: income-paying entities, self-employed individuals, salaried employees who directly declare PIT at the tax office.

The Human Resource Department of income-paying entities should pay attention to the above and inform to all employees for compliance.

Foreigners not physically present but having income in Vietnam still subject to PIT from 1 January 2009

On 11 March 2009, the GDT issued Official Letter 830/TCT-TNCN providing guidance on taxation for foreign individuals not physically present but having income in Vietnam before and after 1 January 2009, particularly as follows:

For periods up to 31 December 2008, foreign individuals who received allowances from Vietnamese companies but not physically present in Vietnam (not a single day) were not subject to PIT in Vietnam. However, from 1 January 2009 onwards, these foreign individuals shall be subject to PIT in Vietnam under the Law on PIT.

Enterprises paying allowances to overseas Board of Directors members should pay attention to this new tax regulation.

Import duty

Investment in hotel, restaurant, villa and golf course businesses not entitled to tax incentives

On 23 March 2009, the General Department of Customs issued Official Letter 1534/TCHQ-KTTT reaffirming that investments in building and operating hotels, restaurants, villas and golf courses are not encouraged investment projects. Therefore, they are not entitled to Import Duty exemption under prevailing laws.

Import Duty treatment on sale of garment and textile processing material and products wastes

On 18 March 2009, the Ministry of Finance issued Official Letter 2964/BTC-TCHQ to provide the application of Import Duty on the sale of garment and textile processing material and product wastes under processing contracts/ appendices already liquidated by 31 December 2008.

Accordingly, the sale of garment and textile processing material and product wastes of 3% or less into the domestic market shall not be subject to Import Duty claw-back, provided that normal requirements on customs clearance and authenticity of waste level are met. Tax liabilities arising from the sale of such wastes in to the domestic market will apply as normal.

In case the waste level exceeds 3%, enterprises must carry out customs clearance procedures, pay Import Duty, Value Added Tax, Special Sales Tax (if any) and other financial obligations. The Import Duty payable at this stage shall be the difference between the Import Duties of the materials upon import and the exempted amount.

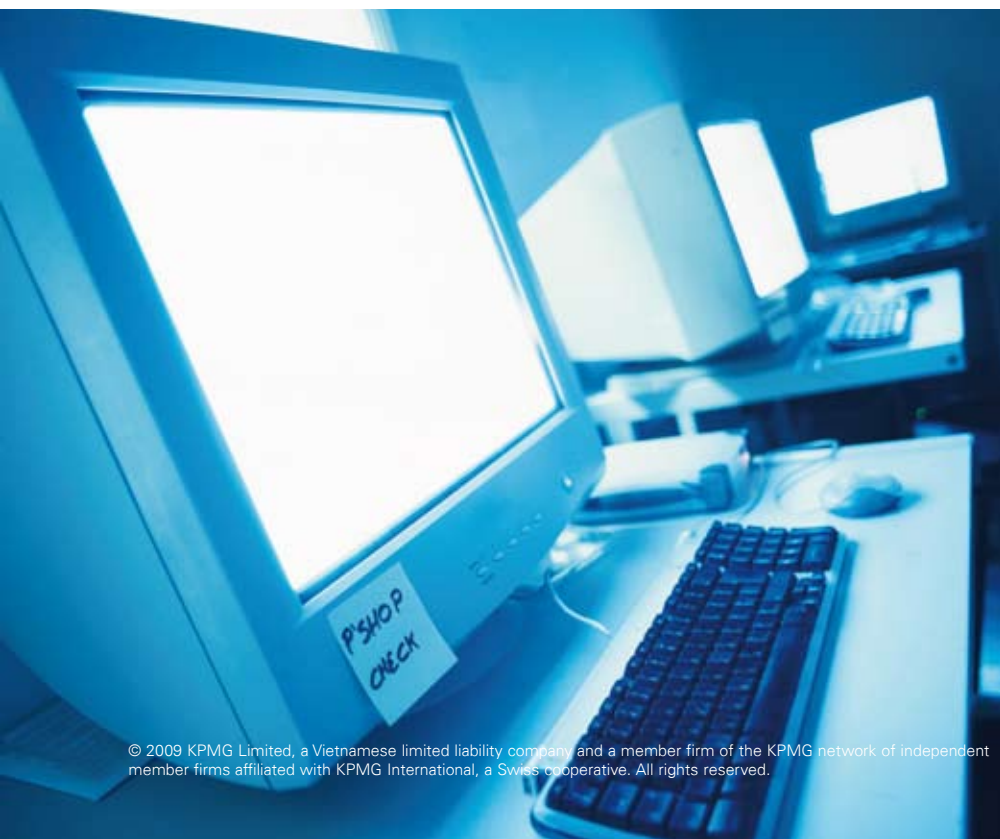
Enterprises must determine the actual amount and level of wastes for the purpose of tax compliance and be responsible for their declarations.

Processing contracts/appendices registered from 1 January 2009 is governed by the provisions of current laws.

Enterprises with processing contracts should take note of the above and may need to revisit their wastage norms from the tax perspective.

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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