

Technical Update

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Corporate Income Tax (CIT)

CIT reduction and payment deferral not applicable to business co-operation contract operations

Under current regulations, a business co-operation contract is a document signed by two or more parties which stipulates the responsibilities of, and the sharing of business results between, the parties for the purposes of commencing business investment in Vietnam without creating a legal entity.

On this basis, Official Letter No 848/TCT-CS dated 19 March 2010 of the GDT provided that BCC operations are not eligible for CIT reduction and payment deferral under the fiscal stimulus package provided by the Government.

Circular on deferral of CIT payment in 2010 issued

Further to Decision 12/2010/QĐ-TTg dated 12 February 2010 of the Prime Minister regarding the deferral of CIT payment in 2010 (as already reported in KPMG Tax Alert No. 03 issued in February 2010), the MOF has now released Circular 39/2010/TT-BTC to provide implementing procedures.

Circular 39 elaborates the qualifying criteria for a business to be able to enjoy the tax payment deferral. These include provisions on methods to determine the capital and headcount of an SME, the eligible income from garments and textile, leather and footwear production, the reporting procedures, etc.

Concerned businesses should study the detailed regulations under Circular 39 for proper application.

Detailed guidance on taxation of gains from revaluation of assets

On 23 March 2010, the MOF issued Circular 40/2010/TT-BTC to provide detailed guidance on the taxation of gains earned by enterprises from revaluation of assets. Notable points include:

- Gains from revaluation of fixed assets, including land-use right with definite term, for capital contribution purposes shall be apportioned to other income over the residual depreciable period of the assets
- Gains from revaluation of fixed assets, including land-use right with definite term, for asset transfer purposes in the event of merger, de-merger, conversion, reorganisation, etc shall be recognised as other income on a one-off basis
- Gains from revaluation of land use right with indefinite terms, i.e. where the user could not claim depreciation, either for capital contribution or reorganisation purposes, is temporarily not subject to CIT. However, if the transferee subsequently transfers this land use right or uses it as capital contribution into other projects, tax obligations shall trigger
- Of note, gains from revaluation of land-use right for the purpose of making capital contribution into property or infrastructure development projects for sale, shall be fully recognised as other income on a one-off basis

Under CIT regulations, from 2009 “other income” shall be taxed separately at 25%, regardless of any incentive tax rates that a company may have for its principal business activities.

The above taxation shall apply from 2009 and will affect the 2009 CIT finalisation.

Enterprises who have assets revaluated during 2009 should take note of this regulation.

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 (VAT)

Repair, maintenance and guarantee services for transportation means provided to EPEs entitled to 0% VAT

Repair, maintenance and guarantee services of transportation means provided by local enterprises to EPEs for its production and business operation shall be entitled to VAT rate of 0% subject to documentation conditions.

The above tax treatment is confirmed by the GDT under the OL No. 796/TCT-CS dated 17 March 2010.

Though not explicitly stated in the OL, it is believed that the 0% VAT shall apply even though the above mentioned services are performed outside the premises of an EPE.

No VAT credit for assets previously purchased for production of non-VAT products now used for VAT products

Under VAT regulations, input VAT on assets purchased for production of products and services not subject to VAT is not creditable but added to the asset costs.

On that basis, Official Letter 840/TCT-CS dated 19 March 2010 of the GDT provided that even if later on such assets are used for the production of VAT-able goods and services, the input VAT relating to the residual value of such assets remains non-creditable.

Container handling services provided by overseas shipping companies entitled to 0% VAT

Official Letter No. 583/TCT-CS dated 25/2/2010 of GDT confirmed that container handling services at Vietnam ports rendered by overseas shipping companies shall be entitled for VAT rate of 0%, subject to usual supporting documentation requirements.

On the other hand, commissions earned by Vietnamese companies for acting as agents to collect international shipping freight and other freight surcharges on behalf of such overseas shipping companies shall be subject to VAT at 10%.

From the above, it is therefore important to record these two streams of revenue separately for VAT purposes.

No input VAT claims if invoice is issued after delivery of goods

Official Letter 626/TCT-CS dated 27 February 2010 of the GDT once again confirmed that buyers would not be allowed to claim creditable input VAT on the purchased goods if the suppliers issued invoices after the goods are already delivered.

The timing of invoice issuance is an important criterion for enterprises to determine, declare, claim creditability and/or refund of input VAT.

Therefore, for VAT claiming purposes, enterprises purchasing goods should take this into account and request their suppliers to issue invoices at the time goods are delivered.

Personal Income Tax (PIT)

Employers now allowed to print their customised PIT withholding receipts

According to Circular No. 37/2010/TT-BTC of the MOF, income-paying entities are now allowed to issue customised PIT withholding receipts to individuals if they:

- Are duly incorporated under the laws of Vietnam
- Have obtained a tax code;
- Have sufficient computers and secured IT systems; and
- Did not breach tax regulations twice or more during the past year

Compliance requirements on the creation and use of self printed PIT withholding receipts include:

- Key contents of self printed customised PIT withholding receipts are prescribed under Circular 37
- Registration with, and approval from the local tax office is required before an entity could use its self printed customised PIT withholding receipts
- Customised PIT withholding receipts must be used in sequential order, i.e. no skipping is allowed
- Prior notice to the tax authority is required in case there are any changes in the format of customised PIT withholding receipts
- Quarterly reports to tax authorities on the use of customised PIT receipts are required.

Circular 37 shall come into effect from 3 May 2010 (i.e. 45 days for the signing date). Interested employers should note to apply accordingly.

Monthly minimal wage increased to 730,000VND from 1 May 2010

The Government just issued Decree 28/2010/ND-CP stipulating the increased of monthly minimal wage to VND730,000 effective from 1 May 2010. The new monthly minimal wage shall be used to calculate compulsory allowances and other entitlements under the prevailing laws such as SI, HI and UI.

Employers should note the new monthly minimal wage level when calculating compulsory SI, HI and UI contributions for their employees starting from 1 May 2010.

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