

# Technical Update

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## Corporate Income Tax

### Circular 203 on management, utilisation and depreciation of fixed assets effective from 1 January 2010

On 20 October 2009, the MOF issued Circular 203/2009/TT-BTC regulating the management, utilisation and depreciation of fixed assets.

Basically, key provisions under current Decision 206/2003/QĐ-BTC dated 12 December 2003 on the matter remain unchanged with respect to principles of fixed asset depreciation, criteria for recognition of fixed assets, depreciation methods, etc. However, Circular 203 provides more specific and detailed guidance to better cope with the changing business environment.

Below are notable points under Circular 203:

- Circular 203 states that depreciation expenses of fixed assets under it shall be the basis for determining deductible expenses for CIT purposes.
- Enterprises are required to register their method of depreciation with the local tax office prior to application. If disapproving the registered method, the tax office must reply in writing within 30 days for choosing another method.
- A change of depreciation method shall be subject to formal notice to the tax office with clear explanations on the reasons of the change. The depreciation method for each asset item cannot be changed more than two times during the entire useful life of that asset.
- The table below compares the changes in regulated useful life of certain fixed assets between Circular 203 and Decision 206:

Fixed assets	Decision 206/2003/QĐ-BTC		Circular 203/2009/TT-BTC	
	Minimum useful life (year)	Maximum useful life (year)	Minimum useful life (year)	Maximum useful life (year)
<b>Working machinery and equipment</b>				
Mining machines	5	8	5	10
Specialised machinery and equipment for production of construction materials, ceramic and porcelain and glass wares	6	8	10	20
Machinery and equipment used in refinery and petrochemical industry	not stipulated		10	20
Machinery and equipment used in oil and gas exploration and production			7	10
Machinery and equipment used in construction			8	12
Cranes			10	20
<b>Buildings, architectural objects</b>				
Accommodation for employees to rest during shifts, a canteen providing mid-shift meals, changing rooms, toilet facilities, parking facilities, etc	not stipulated		6	25

Circular 203 takes effect from 1 January 2010 and replaces Decision 206 on management, utilisation and depreciation of fixed assets.

Enterprises should take note of the above regulations when calculating depreciation expenses for CIT purposes from tax year 2010 forwards.

### Loan interest expenses allowed as deductible for CIT purpose if partial capital contribution is in line with approved schedule

Per current regulations, if the charter capital of an enterprise has not been fully contributed, loan interest expenses corresponding to the short amount of capital shall not be allowed as deductible expenses for CIT purpose.

Notwithstanding this, OL 4351/TCT-CS dated 23 October 2009 of the GDT clarified that even though full capital contribution has not been made, if an enterprise observes its capital contribution schedule as stated in its charter, the interest expenses on loans obtained for business operation purpose shall be allowed as fully deductible for CIT purpose.

Enterprises with borrowings should note the above guidance to correctly determine deductible interest expenses.

### CIT exemption possible for outbound reinsurance activities if no Permanent Establishment is constituted in Vietnam

Per Official Letter 4474/TCT-HTQT dated 2 November 2009 of the GDT, foreign enterprises which earn income derived from outbound reinsurance would be entitled to CIT exempt if meeting both conditions below:

- (i) Being tax resident of a tax treaty country or territory with Vietnam
- (ii) The reinsurance income derived from Vietnam is not attributed to a permanent establishment of that reinsurance company in Vietnam.

Again, permanent establishment assessment is critical in determining tax obligations of foreign entities having income derived from in Vietnam.

Vietnamese enterprises having outbound reinsurance activities and foreign entities providing reinsurance services should take note of the above guidance, especially during the process of contract negotiation, execution and implementation in order to correctly determine their respective tax obligations or required procedures to claim tax exemption where applicable.



## Value Added Tax

### VAT credit on purchases on deferred payment scheme

On 17 November 2009, the GDT issued OL 4691/TCT-KK confirming that in case an enterprise purchases goods or services on deferred payment scheme and the value for each instalment purchase is greater than 20 million Dong (including VAT), the input VAT on such purchases will still be allowed as creditable input VAT of the enterprise pending evidence of bank transfer payment. The enterprise must indicate the agreed time of payment on its monthly VAT return. As the time of payment becomes due, if there is no evidence of bank transfer payment, the claimed VAT amount must be reduced accordingly.

Enterprises making purchases on deferred payment should take note of the above.

### VAT rates for the business of purchase and resale of international freight

According to OL 15448/BTC-TCT dated 2 November 2009 of the MOF addressed to all local tax departments, where an enterprise does not directly provide international transport services to customers but outsource the same to third parties, the fees it earns from its customers shall be subject to VAT as follows:

- The international freight, even outsourced to third parties, would still be entitled to 0% VAT provided that (i) there is a transport contract between the carrier and the principal for the international transport leg from Vietnam to an overseas country or vice versa, and (ii) there is evidence of payment by bank transfer or similar accepted forms.
- The difference between the selling price and the purchase price of the international freight will be subject to VAT at 10%.

Enterprises engaged in international transportation should take note of the above.

## 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

## Personal Income Tax

### No PIT on income derived from previous years but paid during PIT exemption period of 2009

Official Letter 4581/TCT-TNCN dated 9 November 2009 of the GDT reaffirmed that wages, salaries derived from 2008 but actually paid between 1 January 2009 and 30 June 2009 inclusive shall be exempted from PIT. In addition, income derived from 2007 and before shall also be exempted from PIT if paid between 1 January 2009 and 30 June 2009 inclusive.

From the above guidance, one can see that PIT exemption for the first six months of 2009 is granted based on the time of payment rather than the time of income origination. This is one critical basis for determining the exempted income amount for the first half of 2009.

PIT exemption is one issue which directly impacts the benefits of employees in 2009. There have been various guidelines from both the MOF and the GDT regarding this issue. Notwithstanding this, the determination of exempted income is a highly technical issue and may vary case by case.

For these reasons we recommend that enterprises carefully study the technical position of each case or seek professional tax advice before lodging the 2009 year-end PIT finalisation.

### Minimum wages by location increased from 1 January 2010

On 30 October 2009, the Government issued Decrees No. 97/2009/ND-CP and No. 98/2009/ND-CP promulgating an increase in minimum wages by location applicable to labourers working for both Vietnamese domestic enterprises and FIEs or other foreign employers in Vietnam.

Accordingly, from 1 January 2010 the levels of minimum wages by location for completely unskilled labourers working under normal working environment are increased as follows:

	Location (non-exhaustive list)	Minimum wages at Vietnamese enterprises	Minimum wages at FIEs and other foreign employers
<b>Area I</b>	All urban districts of Hanoi and Ho Chi Minh City	<b>VND980,000/month</b>	<b>VND1,340,000/month</b>
<b>Area II</b>	A number of suburban districts of Hanoi and Ho Chi Minh City; districts and suburban districts of Da Nang City and Can Tho City; Bien Hoa City, Thu Dau Mot town and Thuan An, Di An, Ben Cat, Tan Uyen suburban districts of Binh Duong province; Ba Ria town and Tan Thanh suburban district of Ba Ria Vung Tau province	<b>VND880,000/month</b>	<b>VND1,190,000/month</b>
<b>Area III</b>	All remaining secondary cities under provinces, all remaining suburban districts of Hanoi, all remaining suburban districts of Binh Duong and Dong Nai provinces, etc	<b>VND810,000/month</b>	<b>VND1,040,000/month</b>
<b>Area IV</b>	Other remaining areas	<b>VND730,000/month</b>	<b>VND1,000,000/month</b>

The lowest pay to skilled workers (including those trained by their employers) must be at least 7% higher than the minimum wages by location stated above.

Based on the above minimum wages, enterprises are required to adjust contracted salary where appropriate.

Enterprises, especially who employ a large number of unskilled workers, should take note of the above and make appropriate adjustments to contracted salary with their workers.

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