

# Technical Update

VIETNAM

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## Corporate Income Tax

### Further guidance on recognition of foreign exchange differences from liabilities denominated in foreign currencies

Following Circular 177/2009/TT-BTC dated 10 September 2009, on 15 October 2009 the MOF further issued Circular No 201/2009/TT-BTC to provide detailed guidance on the recognition of foreign exchange gains or losses from liabilities denominated in foreign currencies incurred during the tax period, as well as foreign exchange gains or losses from revaluation of accounts payables in foreign currencies at the financial year-end.

Under Circular 201, during an operating period, foreign exchange differences realised when repaying foreign currency debts shall be recorded as financial income or financial expenses as the case may be during the period. For liquidating companies, foreign exchange differences shall be recognised as liquidation gains or liquidation expenses as appropriate.

Circular 201 also provides that foreign exchange differences on revaluation of short-term foreign currency liabilities (less than 1 year) at fiscal year end shall not be charged to expense or income but recorded in the balance sheet of the financial statements to be reversed at the beginning of next year.

Foreign exchange differences on revaluation of long-term foreign currency liabilities (more than 1 year) at fiscal year end shall be treated as follows:

- Foreign exchange losses will be charged to financial expenses during the year and deductible for CIT purposes. However, as discussed in our September 2009 Technical Update, if these financial expenses result in operating loss of the company, a portion of these financial expenses can be allocated to subsequent years to help the company avoid operating loss, provided that the expense charged to this year must equal at least the foreign exchange difference amount on the liability portion become due this year. The remainder would be monitored and continued to allocate to subsequent years for a maximum of 5 years.
- Foreign exchange gains will be recognised as financial income during the year.

Circular 201 shall come into effect from 29 November 2009. Enterprises should take note of the above regulations for proper implementation.

## Value Added Tax

### VAT invoices must be issued upon transfer of title or use-right of goods

Under the OL 4198/TCT-CS dated 13 October 2009 of the GDT, a seller is required to issue VAT invoice to his buyer as soon as the title or the right to use the goods is transferred to the buyer.

For instance, where an enterprise has purchased goods for export and the invoice is only issued after the goods have been exported, the exporting enterprise cannot claim the VAT on that late invoice as creditable input VAT, which add to the costs of the goods.

Enterprises should note the above requirement when purchasing goods and request sellers to issue VAT invoice in accordance with regulations.

### Permanent establishment presence now assessed for VAT purposes

On 18 September 2009, GDT issued OL 3824/TCT-CS reaffirming conditions for zero rated VAT goods and services. Accordingly, a transaction will be entitled to 0 percent VAT when meeting the below conditions:

- being services directly provided to the following entities:
  - (i) a foreign organisation without a permanent establishment in Vietnam and not a VAT taxpayer in Vietnam
  - (ii) a foreign individual who is a non-resident of Vietnam
  - (iii) a Vietnamese residing overseas during the period of providing services
  - (iv) organisation and individual in non-tariff zone having business registration in accordance with the current regulations
- having service provision contract signed with an offshore organisation or offshore individual or with an organisation or individual in a non-tariff zone
- having payment voucher for exported services via a bank and other source vouchers required by law.

Of note, OL3824 places a stress on the condition of no permanent establishment (PE) presence in Vietnam of a foreign organisation. This again indicates increasing scrutiny of tax authorities on the presence of a PE of foreign entities in Vietnam. Previously, the PE issues were normally discussed in CIT related issues and when assessing tax exemption claims under a tax treaty only. Now, this issue is being mentioned in a VAT related matter as well.

In the coming time, it is anticipated that the implications of a PE presence in Vietnam of a foreign entity could be further scrutinised.

## Personal Income Tax

### Further guidance on PIT on stock grant and stock option

On 7 October 2009, the MOF issued OL14169/BTC-TCT providing guidance on the PIT obligation of individuals who receive stock grant or stock option from their employers in Vietnam or from overseas.

Accordingly, when an employee is granted with stock bonus and/or stock option, such grant will be included in his or her employment income and determined at the book value of the stock at the time of grant.

An employee is not yet required to pay PIT at the time of acceptance of such grant or exercise of such stock option.

Upon transfer of the stock earned from the realisation of the above grant or exercise (or transfer of stock of the same class), an employee shall be subject to two taxes as follows:

- **PIT on payroll income:** to be calculated on the book value of the stock and taxed at progressive rates. However, the employee the tax is not charged at the time of transfer but deferred to year end finalisation; and
- **PIT on securities transfer:** to be calculated either at 0.1% of the transfer value or at 20 percent of the difference between the transfer value and the book value in the case of stock grant, or at 20 percent of the difference between the transfer value and the arm-length's purchase price in the case of stock option. PIT on securities transfer is payable on each transaction. As a reminder, PIT on securities transfer is still exempt till the end of 2009.

Where an employee transfers the stock option right immediately after receipt of such right, he or she shall be subject to PIT at the time of transfer.

Enterprises and individuals involved in stock grant and stock options schemes should take note of the above regulations.



## Customs

### Issuance of the index of goods subject to dutiable price control

On 2 October 2009, the Vietnamese General Department of Customs issued Official Letter No. 5931/TCHQ-KTTT (OL 5931) to Custom Departments in all cities and provinces providing the index of goods subject to dutiable price control and attached dutiable price.

Some of goods subject to dutiable price control which are clearly stated with specific codes under OL 5931 include: Automobile of all kinds, motorcycle, air conditioners, washing machines, refrigerators, igniting machines and motors, gas ovens, iron and steel; construction glass; garment of all kinds; liquors and alcohol.

The index of goods subject to dutiable price control and attached dutiable price of OL5931 are used to compare, collate and inspect dutiable price of goods declared by enterprises, identify any discrepancy, to make references according to the current regulations, and to classify and assess the reliability of existing pricing information on the current pricing database of the Customs authorities. OL5931 also provides the inspection method of comparing the declared dutiable price or price after discounts and deductions (if available) of imported goods against the dutiable price of the same or similar goods listed in this index. Procedures for revaluation and referencing of prices between the price of the imported goods and dutiable price listed in this index, in the event where discrepancy arisen, shall be conducted in accordance to Circular 40/2008/TT-BTC.

Enterprises having import activities of the above goods should take the above guidance into for proper compliance in the determination of taxable income to avoid being challenged and involved in a custom inspection.

## Tax Administration

### Intensified monitoring and investigation of tax infringements in retail and service businesses

On 17 September 2009, the GDT issued Official Letter No. 3778/TCT-TTr requesting all local tax offices to intensify the tasks of monitoring and investigation of tax infringements in retail and service businesses where vendors tend not to issue invoices to or under invoice customers, resulting in under declaration of revenue and tax evasion. Focused businesses included automobile and motorcycle dealers, household appliances vendors, electronic product sellers, restaurant caterers, etc.

Accordingly, sale of goods without invoices or improper invoices, under-declaration of taxes, under-declaration of goods sold, etc shall be subject to penalties under taxation and invoice regulations. Repeated infringements should be subject to suspension of business licence. Criminal charge is also a possibility for serious cases.

Although the regulations are not new, the above recent official guidance from the GDT is another indication of increased requirements by competent authorities on enhanced levels of statutory compliance and reporting quality from businesses.

Enterprises operating in the retail service sector should pay particular attention to the above requirements.

## Abbreviations

CIT	HI	MOST
Corporate Income Tax	Health Insurance	Ministry of Science and Technology
EPZ	IZ	MPI
Export Processing Zone	Industrial Zone	Ministry of Planning and Investment
FCT	LOE	PE
Foreign Contractor Tax	Law on Enterprise	Permanent Establishment
FDI	LOI	PIT
Foreign Direct Investment	Law on Investment	Personal Income Tax
FIEs	MOF	SI
Foreign Invested Enterprises	Ministry of Finance	Social Insurance
GDC	MOIT	SST
General Department of Customs	Ministry of Industry and Trade	Special Sales Tax
GDT	MOLISA	VAT
General Department of Taxation	Ministry of Labour, Invalids and Social Affairs	Value Added Tax

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