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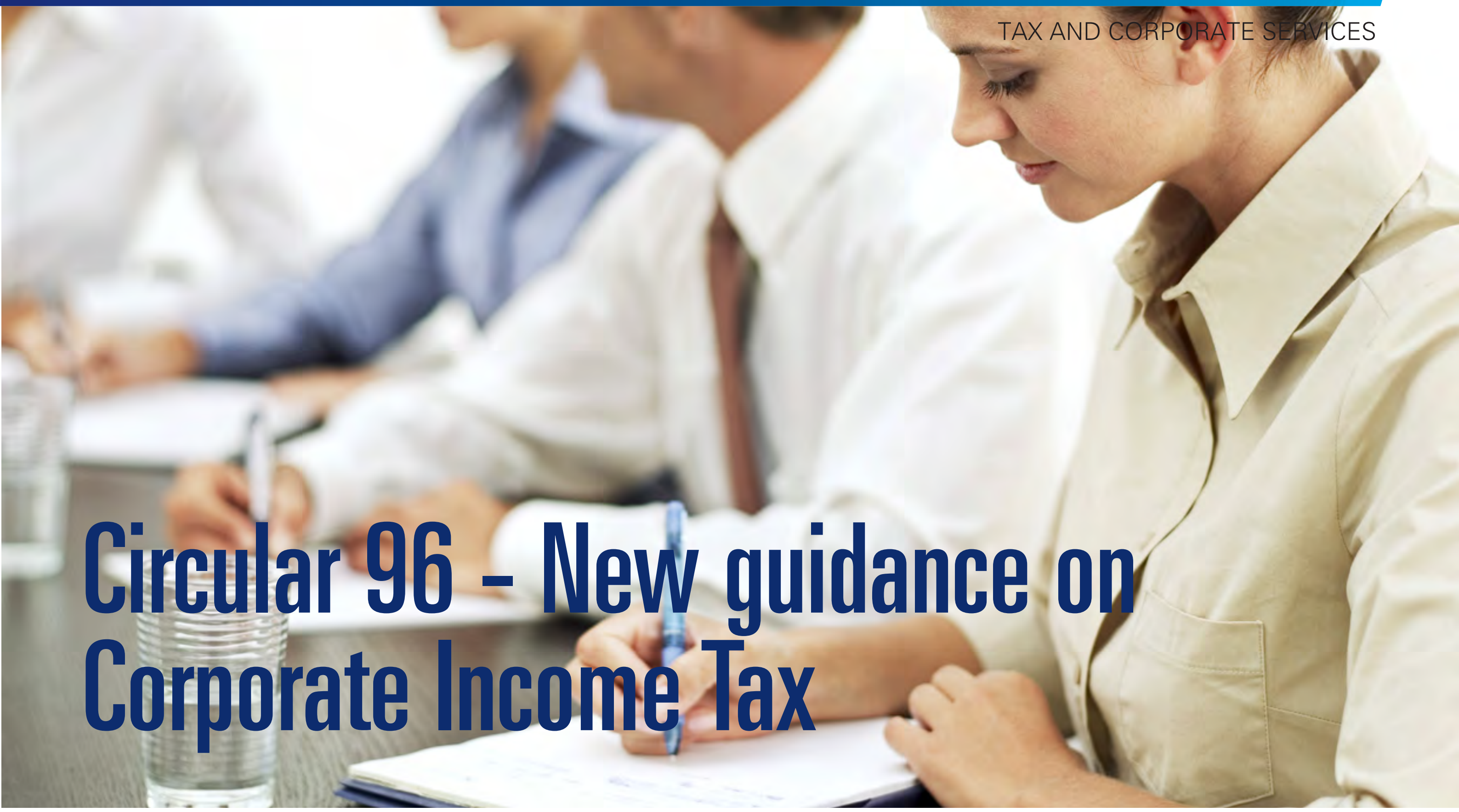
TAX ALERT
July 2015

TAX AND CORPORATE SERVICES



Circular 96 – New guidance on Corporate Income Tax

Further to Decree 12/2015/ND-CP dated 12 February 2015 issued by the Government, the Ministry of Finance issued Circular 96/2015/TT-BTC ("Circular 96") dated 22 June 2015 providing guidance on Corporate Income Tax ("CIT"). Circular 96 will take effect on 6 August 2015. The General Department of Taxation has also issued Official Letter No. 2512/TCT-CS summarizing the major changes under Circular 96.

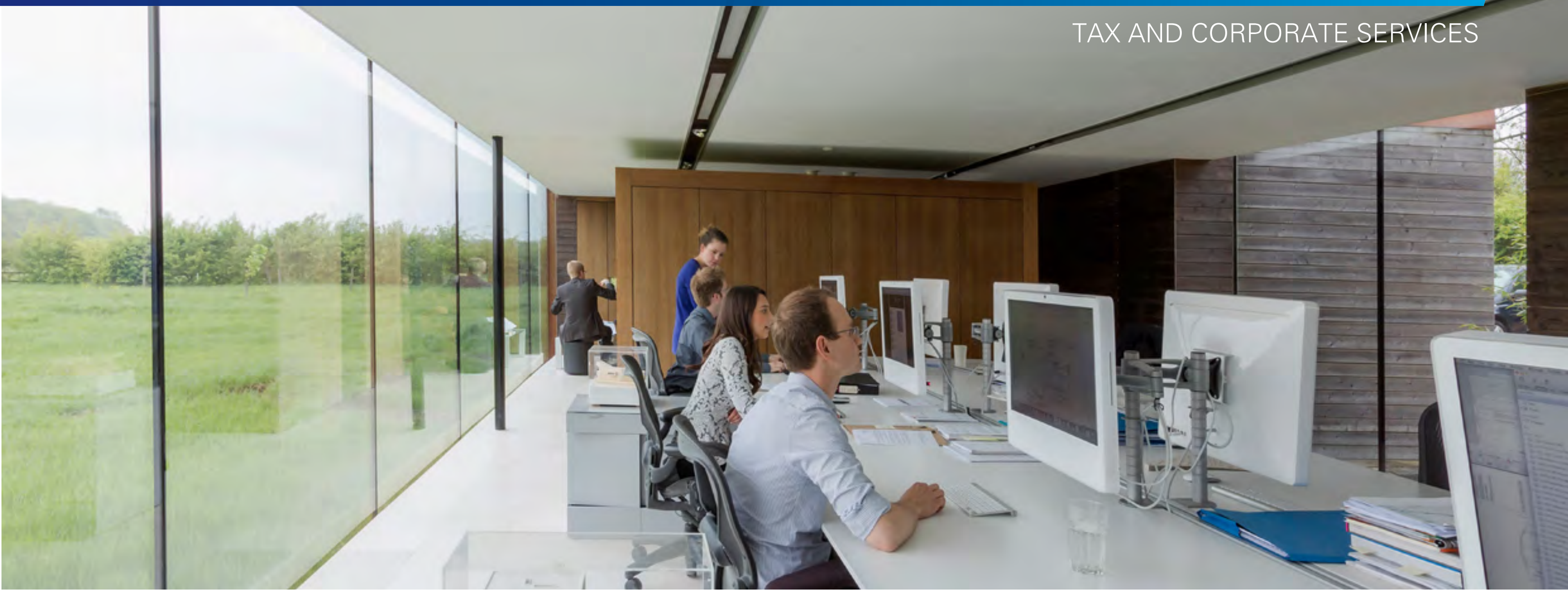
The notable points of Circular 96 are:

1. CIT declaration and payment for income derived from offshore investment projects

- Income from offshore investment projects should be declared in the year when the profit is remitted to Vietnam. Previously, the income was included in the CIT finalization of the year subsequent to the fiscal year where the income was derived, or the same year in which the income was derived.
- Supporting documents and dossiers for credit of tax paid overseas are simplified to be similar as those required under the Double Tax Treaty application. Required documents now include:
  - Copy of tax declaration submitted overseas, certified by the taxpayer;
  - Copy of the tax payment vouchers certified by the taxpayer, or the original certification of the tax payment issued by tax authorities overseas, or a copy of a document having equivalent validity certified by the taxpayer.
- Gains (losses) from offshore investment projects cannot be offset against losses (gains) incurred in Vietnam.

2. Timing for revenue recognition

Timing for revenue recognition in the case of service provision is at the time when the service provision is fully or partially completed. Previously, if the invoice was issued before the completion of service, the timing for revenue recognition was at the invoice issuance date. Therefore, maintaining supporting documents evidencing the full or partial completion of service is now more important.



3. Deductible expenses

- Advertising and promotion expenses are fully deductible, instead of being capped at 15% of total deductible expenses as in the previous regulations.
- Simplified dossiers to determine the value of damaged goods due to force majeure causes, change of the natural biochemical process or expiration which are not compensated. Enterprises are neither required to submit explanatory letters to the tax authority on the damage/loss incidences nor request certification from the competent authorities on force majeure cases.
- Supplementing the list of the deductible depreciation expenses to include fixed assets used for employees and for vocational training purposes such as library, kindergarten, sport complex and the related machineries and equipment which are qualified as fixed assets.
- Removal of the requirement for an enterprise to establish material consumption levels. Material consumption which exceeds the level stipulated by the Government (if any) is non-deductible.
- Supplementing non-deductible expenses when leasing assets from individuals without proper supporting documents.
- Life insurance for the employees are now fully deductible, instead of being capped at VND1 million/month.
- Housing for expatriates coming to Vietnam for business purposes are deductible if the contract between the Vietnamese party and the overseas party clearly stipulates that the Vietnamese party is responsible for the expense.
- Uniform expenses in kind are now fully deductible, instead of being capped at VND5 million/year.
- Business trip allowances paid in accordance to the financial policies or internal policies of the enterprises are now fully deductible and no longer subject to a cap of two times the level stipulated by the Ministry of Finance.
- Mining right fees exceeding the actual amount incurred during the year is non-deductible.
- Interest incurred on loans to invest in other companies is deductible provided that the charter capital of the investing company has been fully contributed.
- Payments for non-compulsory insurances for employees such as accident insurance, medical insurance, and other types of voluntary insurances are treated as deductible staff welfare expense, capped at one (01) month average actual salary.
- Realized foreign exchange losses or unrealized foreign exchange losses from revaluation of payable accounts which are not directly related to the main business activities of the company is considered financial expenses, instead of operating expenses for main business activities.
- Where a company admits a new member whose contribution amount is higher than the value of the member's share in the charter capital, the tax treatment for the premium amount shall be:
  - If the premium belongs to the company's capital, the amount is not included in taxable income of the company.
  - If the premium belongs to any former members, the amount is considered income of the former members.

4. Tax exempt income

Income from processing agricultural and aquatic products in areas with especially difficult socio-economic conditions are exempt from CIT.

5. Losses carried forward upon company separation or division

Losses incurred prior to a company separation or division and are eligible to be carried forward as per the regulations will be allocated to the successor companies after separation or division in accordance with the separated/divided equity ratio.

6. Conditions to apply tax incentives

(i). New investment project ("NIP")

Investment projects with an Investment License or Investment Certificate prior to 1 January 2014 but are still in the investment stage, neither generating revenue, nor commencing operations, are subject to tax incentives applicable to a NIP. Previously, to qualify for CIT incentives as a NIP, the projects required an amended Investment Certificate from 1 January 2014.

(ii). Tax incentives for hi-tech companies

Hi-tech companies and agricultural companies applying high technology are only allowed to apply tax incentives for income derived from hi-tech activities or activities applying high technology and income directly relating to hi-tech activities or activities applying high technology.

(iii). Tax incentives for expansion investment projects ("EIPs") in the period from 2009 to 2013

- Investment projects in industrial parks, EIPs which were licensed or commenced the investment in the period from 2009 to 2013 will be entitled to tax incentives for remaining period as from the tax year 2015, provided that those projects satisfy the conditions of incentive entitlement in accordance to the Law No. 32/2013/QH13, Law No. 71/2014/QH13 and the implementing regulations.
- EIPs which were still under the construction stage before 2009 and commenced the business, manufacturing operation from 2010 are allowed to apply the CIT incentive for the additional income based on one of the following legal basis:
  - Applicable regulations at the time of starting the EIPs; or
  - The provision under the Law 32/2013/QH13, Law No. 71/2014/QH13 and implementing regulations.
- Investment projects located in incentive industrial zones commencing operation from 2009 to 2013 shall be subject to tax incentives for remaining period from 2015, if they qualify incentive conditions under CIT Law 32/2013/QH13, Law 71/2014/QH13.

(iv). Application of CIT incentives in case of change in terms of location entitled to tax incentives

- Enterprises are entitled to tax incentives or higher tax incentives for the remaining period of the tax year 2015 if the investment projects are located in areas which did not fall under the list of tax incentive entitlement areas, or fell under the list of tax incentive entitlement areas with lower incentives scheme but are qualified as tax incentive entitlement areas from 1 January 2015.

(v). Tax incentives for large scale manufacturing projects

Clarifying the three cases enjoying the preferential CIT rate of 10% for 15 years, CIT exemption for 4 years, and 50% CIT reduction for 9 subsequent years:

- Large scale manufacturing projects with minimum investment capital of VND6,000 billion, disbursement within 3 years from the date the first investment certificate is granted. Previously, the limitation of 3 years generally counts from the time of granting the investment certificate.

- Large scale manufacturing projects with a minimum investment capital of VND12,000 billion, using advanced technology and disbursing capital for no more than 5 years since the date of the investment certificate.
- Investment projects in manufacturing products which belong to the list of supporting industry products under Decision 1483/QD-TTg dated 26 August 2011 of the Prime Minister.

(vi). Tax incentives for income derived outside the incentive entitlement location

If a project entitled to tax incentive based on the location condition, income from activities implemented outside the location of establishment, the tax incentive will be determined based on the location where the income is generated.

(vii). Options to apply tax incentive for expansion investment project with less than 12 months of operations

In case the first tax year of the tax incentive entitlement for expansion investment project is less than twelve (12) months, companies are allowed to:

- Enjoy the tax incentives in that first tax year; or
- Register with the tax authority to start enjoying the tax incentives from the following tax year.

7. Effectiveness of Circular 96

- Circular 96 is applied for the tax year 2015;
- If the fiscal year is different from the calendar year, Circular 96 shall be applied as follows:
  - Tax incentive is applied for the remaining period starting from the tax year 2015;
  - Other contents are applied from 1 January 2015.

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