

Technical Update

Tax and Legal Services

June 2016



1. Corporate Income Tax ("CIT")

- (i) *CIT incentives also apply to income from deposit interest and lending interest of a company entitled to CIT incentives based on the location condition*

According to Official Letter No. 2351/TCT-CS dated 30 May 2016, in case a company is entitled to CIT incentives based on the location condition, said CIT incentives shall also apply to income generated from business activities within such incentive location, including interest from a definite term deposit at a bank, and lending interest derived from such a location. The Official Letter, however, is silent on how to define the term of "derived from the incentive location", and to as whether the deposit interest and lending interest must come from a bank or organisation physically located in such incentive location.

- (ii) *Lending contract without interest will be subject to tax imposition*

According to Official Letter No. 2079/TCT-CS dated 16 May 2016, in case a company enters into a "capital lending contract" with an individual without interest being charged, the transaction is deemed by tax authorities to not be in accordance with the market price, and therefore subject to tax. However, where the transaction is entered into in the form of "money borrowing", this will not be deemed taxable.

2. Value Added Tax ("VAT") and invoicing requirements

- (i) *Customer services and debt monitoring services provided to a foreign company that are performed and consumed within Vietnam, are subject to VAT.*

According to Official Letter No. 2002/TCT-CS dated 11 May 2016, in case a Vietnamese company provides customer services and debt monitoring services in Vietnam to a foreign company, those services are regarded as having been performed and consumed in Vietnam. Subsequently, those services will not be subject to 0% VAT.

- (ii) *Decree No. 49/2016/ND-CP amending and supplementing certain articles of Decree No. 109/2013/ND-CP on handling of administrative violations in price management, charges, fees, and invoices*

On 27 May 2016, the Government issued Decree No. 49/2016/ND-CP, which amends and supplements certain articles of Decree No. 109/2013/ND-CP on how to handle administrative violations in price management, charges, fees, and invoices. Accordingly, Decree 49 has provided certain significant changes in the guidelines to handling administrative violations on invoices that are more favorable for enterprises. Decree 49 takes effects on 1 August 2016.

3. Personal Income Tax ("PIT"), Compulsory Insurances and Labor Management

- (i) *The compulsory nursing insurance contributed overseas is allowed to be deducted from assessable income for PIT calculation purposes*

Under Official Letter No. 2291/TCT-TNCN dated 27 May 2016, the General Department of Taxation has confirmed that in case a "nursing insurance" contribution is mandatory for a tax resident in accordance with the legislation of their home country, this contribution is deducted from assessable income for Vietnamese PIT calculation purposes.

- (ii) *Procedures and documents for compulsory insurance declaration*

On 22 April 2016, Vietnam Social Insurance issued Decision No. 636/QD-BHXH providing guidance on the procedures for declaring compulsory insurance scheme contributions. Decision 636 takes effect on 1 June 2016 and replaces Decision No. 01/QD-BHXN, Article 2 Decision No. 1018/QD-BHXH, Article 1 Decision No. 919/QD-BHXH, and supersedes Official Letter No. 5435/BHXH-CSXH.

4. Foreign Contractor Tax (“FCT”)

(i) FCT for loan guarantee service payments

According to Official Letter No. 2510/TCT-CS dated 7 June 2016, FCT for loan guarantee service payments shall be treated as follows:

CIT portion:

- If a Vietnamese company enters into a loan contract with a foreign contractor and the contract includes a loan guarantee service, the loan guarantee service payments are regarded as loan interests for CIT calculation purposes.
- If the Vietnamese company enters into a separate guarantee contract with the foreign contractor, then the loan guarantee payments are regarded as income from service provision for CIT calculation purposes.

VAT portion:

- If the loan contract with the foreign contractors includes provisions for a loan guarantee service, and the loan guarantee service is provided by a credit institution and/or branch of a foreign bank in accordance with the credit institute and banking legislations, then the loan guarantee service payments are not subject to VAT.
- If the loan guarantee service is not categorised as a bank guarantee service (i.e. the guarantee service provider is not a credit institutions or branch of a foreign bank), the loan guarantee service payment should be subject to VAT.

(ii) FCT for surcharges of foreign sea carriers

In accordance with the provision of Official Letter No. 6142/BTC-CST dated 9 May 2016 of the Ministry of Finance, FCT for surcharges other than transportation service charges of foreign sea carriers shall be treated as follows:

- The Official Letter has provided a comprehensive list of surcharges which are regarded as transportation service fees not subject to VAT portion of the FCT.
- The surcharges relating to trips from Vietnam to foreign countries are subject to CIT at the rate of 2%. If the Vietnamese party imports goods under FOB terms, the surcharges relating to the transportation service fee are not subject to CIT.
- Surcharges that are not regarded as a transportation service fee as mentioned above, or surcharges from the aforementioned list where the Vietnamese party exports under FOB terms or imports under CIF terms but are liable for the surcharges payments, are not subject to FCT if the related services are performed outside Vietnam. If the related services are performed in Vietnam, then such surcharges are subject to VAT at the rate of 5% and CIT at the rate of 5%. The amount corresponding to the work portion subcontracted to a Vietnamese party shall be deducted from taxable income for FCT calculation purposes.
- If foreign carriers let their agencies be the beneficiaries of the total amount of surcharges, then these surcharges are not subject to FCT.

(iii) FCT for sale transactions in bonded warehouses

- According to Official Letter No. 2389/TCT-CS dated 1 June 2016, if a Vietnamese company enters into a sales contract with a foreign company and the delivery of goods is carried out at a bonded warehouse rented by the seller in Vietnam, then the foreign company is liable to FCT in Vietnam. The Vietnamese company is responsible for withholding, declaring and paying FCT on behalf of the foreign contractor.
- If two foreign entities enter into a sales contract with each other and the delivery of goods is carried out at a bonded warehouse in Vietnam, then the foreign company that earns income from the sales is liable to FCT. This official letter, however, does not specify the mechanism for FCT withholding, declaration and payment in this case.



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