

Technical Update

Tax and Legal Services

May 2016



1. Corporate Income Tax ("CIT")

(i) *Determination of CIT incentives for income from processing of agricultural and fishery produce*

According to official letter No. 5181/BTC-TCT dated 15 April 2016 of the Ministry of Finance, the policy on CIT incentives for income from processing of agricultural and fishery produce will be implemented as below:

- Requirement for materials used: Materials used for agricultural and fishery produce eligible for CIT incentives can be imported or domestically manufactured. However, these materials must be either raw or preliminarily processed, and have to account for over 30% of the selling price of the relevant finished goods.
- Enjoying CIT incentives under other incentive investment conditions: In case a company is enjoying CIT incentives based on other incentive conditions, the company is allowed to enjoy such incentives simultaneously with incentives applied for processing of agricultural and fishery produce.
- CIT incentives in case of subcontracting the processing of agricultural and fishery produce:
 - In case a company (contractor) subcontracts the processing of agricultural and fishery produce to other party (subcontractor), income derived from this processing form is still eligible for CIT incentives if the incentive conditions are satisfied.
 - In this case, the subcontractor is also eligible for CIT incentives provided that: (i) the ratio of raw material that is agricultural and fishery produce (excluding the value of material provided by the contractor) accounts for at least 30% of the production expenses of the subcontractor; and (ii) the processing products are not subject to special consumption tax.

- In case a trading company purchases raw material that is agricultural and fishery produce for trading purposes, then the income from the relevant trading activities are not eligible for CIT incentives.

(ii) *Determination of CIT incentives prior to 2014 for a company that was granted two investment certificates to develop two separate projects*

Under the CIT regulations that prevailed prior to 2014, only a company newly established from an investment project would be entitled to CIT incentives for a new investment project. However, official letter No. 1720/TCT-CS dated 25 April 2016 now provides guidance that where a company was granted two investment certificates to develop two separate projects, the company's eligibility for CIT incentives will be determined as below:

- Depending on which project the company aims to implement, the corresponding incentive the company may be entitled to shall be determined based on the actual conditions of such project;
- In case the company cannot self-assess, the tax authorities will determine the CIT incentive based on the project that was licensed earlier.

(iii) *Income from transfer of collateral real estate is considered income from real estate transfer and the collateral amount paid to banks is not allowed to be deducted*

According to official letter No. 2044/TCT-CS dated 13 May 2016 issued by the General Department of Taxation, in case a company transfers all assets on land and land used right used as collateral -subject to the approval from the bank - to another party, the transfer shall be treated as a real estate transfer subject to CIT declaration. The collateral amount paid to the bank is not allowed to be deducted from taxable income for CIT calculation purpose.

2. Value Added Tax ("VAT")

- (i) *Transfer of project to a subsidiary requires the preparation of price evaluation minutes and a VAT invoice in relation to the difference received from the project transfer*

According to official letter No. 1868/TCT-CS dated 5 May 2016, in case a company establishes a subsidiary to transfer a current project for continuous development, the company is required to issue minutes of capital contribution to its subsidiary supported by an evaluation issued by a valuation organisation and a dossier on the project's fixed asset.

The company is not required to issue a VAT invoice upon transferring the project. In case the company receives a difference between the contributed capital and the evaluated value of the project, they are required to issue a VAT invoice, however, the tax rate item is left blank and crossed out.

- (ii) *VAT element of FCT claw-back is not creditable*

Pursuant to official letter No. 1964/TCT-CS dated 9 May 2016, in case tax authorities carry out a tax audit at a company and impose additional FCT, the company is not allowed to claim a VAT credit or a refund for the VAT element of such additional amount of FCT.

3. Personal Income Tax ("PIT")

- (i) *Centralisation of PIT declaration at the bank headquarters*

According to official letter No. 1754/TCT-TNCN dated 27 April 2016, from 1 January 2016 onwards, in case a bank operates under the model whereby the headquarters directly pays income that is of a salary and wages nature, and lottery income of the employees working at the bank's branches, the headquarters is allowed to centralise the PIT declaration at the headquarters for the aforementioned income. The PIT returns should be submitted to the tax authority that manages the headquarters.

PIT liabilities shall be allocated to the local tax offices of the areas where the bank's branches and headquarters are located. The headquarters prepares a summary of tax paid to each local tax office attaching monthly/quarterly/finalisation PIT returns and makes PIT payments to the corresponding local tax offices.

- (ii) *Non-resident taxpayers who overpaid PIT due to change of tax residence status will be entitled to a PIT refund*

According to official letter No. 1657/TCT-TNCN dated 20 April 2016, in case an expatriate signs a labour contract in Vietnam for a number of years, is tax resident and subject to Vietnamese PIT at the progressive tax rates but only presents in Vietnam for less than 183 days in the last working year, such expatriate shall be treated as a non-resident taxpayer subject to PIT at the flat tax rate of 20% for the last working year and is not required to finalise PIT upon his/her departure from Vietnam.

Where the change of residency status and PIT calculation rate as mentioned above result in overpayment of PIT, the expatriate will be allowed to apply for a PIT refund.

4. Import and Export Duty

On 6 April 2016, the National Assembly ratified the Law on Export and Import Duties No. 107/2016/QH13. This Law stipulates the basis and timeline for import and export duty calculation, the import and export tariffs, anti-dumping duty, countervailing duty, safeguard duty applicable to exported and imported goods, and also introduces additional exemptions and cases where reductions and refunds of export and import duty may be applied.

The Law takes effect on 1 September 2016 and replaces the Law on Export and Import Tax No. 45/2005/QH11.

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