

Technical Update

Tax and Legal Services

February 2016

1. Corporate Income Tax ("CIT")

(i) Utilization of losses incurred by the acquired company prior to the acquisition date

According to Official Letter No. 97/TCT-CS dated 8 January 2016 by the General Tax Department, if an acquired company accumulated loss which has not been fully utilized prior to the acquisition date, and the loss is eligible to carry within its effective period in accordance with the current regulations, the acquiring company is allowed to inherit and carry forward from the acquired company, subject to the following principles:

- The loss to be offset against the income of the acquired company (which is separately recorded), then the remaining loss is to be offset against the income of the acquiring company;
- The loss must be offset against the incentive income first, then the remaining loss is to be offset against non-incentive income, the remaining loss is allowed to carry to the following tax period; and
- The loss cannot be offset against the gain derived from transfer of real estate, transfer of investment projects, transfer of rights to participate in investment projects, and rights to explore mineral resources.

(ii) Determination of deductible management service fee of certain typical businesses

Under the regulations of Joint Circular No. 13/1997/TTLB dated 18 October 1997 by the Ministry of Planning and Investment and the Ministry of Finance on the management service of foreign investment companies, the management service fee is subject to a specific cap for certain typical industries, such as 3% of revenue and 10% of gross operating profits applied to hotel management or apartment rental (with business services similar to hotel), 2% of revenue

and 5% of gross operating profits applied to office management or apartment rental (without business services similar to hotel), 2.5% of revenue and 7% of gross operating profits applied to golf course management or sport and entertainment clubs.

Based on Joint Circular 13/1997/TTLB mentioned above, and on the basis that Joint Circular 13/1997/TTLB is still in effect to date, the General Tax Department opined in Official Letter No. 189/TCT-CS dated 18 January 2016 on the deductibility of hotel management service fees as follows:

- Where a company in Vietnam enters into a management service contract with a foreign service provider, the deductible management fee for CIT purpose is subject to cap stipulated under Joint Circular 13/1997/TTLB;
- Where the management service contract is signed with a non-related local company, the management fee would be fully deductible for CIT purpose, provided that proper supporting documents are available in accordance with current regulations;
- Where the company and the management service provider are related parties, the price setting of the transaction should comply with the arms' length principle in accordance with Circular 66/2010/TT-BTC.

(iii) Provision for impairment of investment in unlisted securities

According to Official Letter No. 143/TCT-CS dated 12 January 2016, a company is not allowed to make provision for impairment of investment in unlisted securities if the market value of those unlisted securities cannot be determined. The market price of unlisted securities are determined as being the average price of the transaction prices of three securities companies at the time of making provision.

2. Value Added Tax (“VAT”)

- (i) *VAT declaration and invoicing for goods internally circulated between the head office company and its branches*

According to Official Letter No. 105/TCT-KK dated 8 February 2016, the supporting documents and the VAT declaration applicable for goods internally circulated between the head office company and its branches are as follows:

- If the branch independently maintains its accounting records, the head office company and branch are required to issue VAT invoices when goods are internally transferred between the head office company and the branch;
- If the branch does not maintain its own accounting records, neither sells goods, nor generates revenue, the Good Delivery Notes should be used to support internal goods transfer. The company is required to centralize the VAT declaration at the head office company and pay deemed VAT at 2% (for goods subject to 10% VAT) or 1% (for goods subject to 5% VAT) to the managing tax authority of its branch. In this case, the head office company is required to inform in writing to the managing tax authorities of both the head office company and its branch about the accounting method and business operations of the branch in accordance with current regulations.

3. Personal Income Tax (“PIT”), compulsory insurance, and labour policies

- (i) *20% PIT rate to be applied on income paid to expatriates after the completion of PIT finalization and their departure from Vietnam*

According to Official Letter No. 223/TCT-TNCN dated 19 January 2016, in case an expatriate is additionally remunerated with some payments for their working period in Vietnam, (e.g. bonus, expenses for personal staff transportation, etc.), after the completion of PIT finalization and the expatriate has left Vietnam, such expatriate should be considered a non-tax resident upon the income entitlement for tax purpose. Subsequently, flat PIT rate of 20% should apply on the additional income. This official letter however is silent on whether the determination of PIT obligation as being a non-tax resident would depend on the timing of income entitlement within the year when such expatriate leaves Vietnam or not.

- (ii) *Tax obligations of individuals and household taxpayers doing several business activities with annual income for each one less than VND100 million*

According to Official Letter No. 267/TCT-TNCN dated 20 January 2016, if an individual or household taxpayer paying tax on a deemed method operates in various business activities with annual revenue of each activity is less than VND100 million but

total revenue of all activities is greater than VND100 million, this individual or household taxpayer should be subject to deemed VAT and PIT in accordance with current regulations.

- (iii) *Tax management procedures applied for individuals having assets leased*

On 31 December 2015, the General Tax Department issued Decision No. 2469/QĐ-TCT on the tax management procedures applied for individuals having assets leased. Accordingly, where an individual or household taxpayer generates annual revenue from assets leasing (e.g. house rental, machine rental, car rental, etc.) up to VND100 million, such individual or household taxpayer is required to register the leasing contracts with the tax authorities so that the tax authorities would grant a the tax management code for each contract.

Where the lessor authorizes or it is mutually agreed under the leasing contract that the lessee or other company, individual would declare and pay taxes on behalf of the lessor, the responsibility of tax payment and compliance requirement of tax management procedures in accordance with Decision 2469 still rest with the lessor.

- (iv) *PIT exemption for Vietnamese individuals working in representative offices of international organizations of the United Nations in Vietnam*

According to Decision No. 07/2016/QĐ-TTg dated 22 February 2016 by the Prime Minister, where an individual is remunerated with employment income by a representative office of international organizations of the United Nations in Vietnam, such income should be exempted from PIT. This decision is applicable to the Vietnamese who have Vietnamese nationality and works as employees of the representative office of international organizations of the United Nations in Vietnam. The Decision 07/2016/QĐ-TTg takes effect on 1 May 2016.

- (v) *PIT exemption for foreign experts to implement programs, non-governmental aid projects in Vietnam*

According to Decision No. 06/2016/QĐ-TTg dated 22 February 2016 by the Prime Minister, income remuneration of a foreign expert who directly implements programs, non-governmental aid projects in Vietnam is exempted from PIT provided that certain conditions as stipulated under the decision should be met. Decision 06/2016/QĐ-TTg takes effect on 1 May 2016.

4. Other fees and charges

- (i) *Environmental Protection Fee for the exploration of mineral resources*

On 19 February 2016, the Government issued Decree No. 12/2016/ND-CP on the environmental protection fee for mineral exploitation. Decree 12/2016/ND-CP takes effect on 5 January 2016 and supersedes Decree No.74/2011/ND-CP dated 28 May 2011.

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