

# Technical Update

## Tax and Legal

June 2019

### 1. Corporate income tax ("CIT")

#### ***(i) Dividend income is taken into account to calculate net profit from business operation to determine the cap of deductible interest expenses***

According to the Official Letter No. 1315/TCT-DNL dated 10 April 2019 of the General Department of Taxation ("GDT"), in case a company invests into a subsidiary and generates dividend income, which is recorded into financial income, the item of "net profit from business operation" to determine the capped deductible interest expense shall be calculated as follows:

*Net profit from business operation = Gross profit from goods sales / service provision – Selling expenses – General and Administrative expenses + Financial income – Financial expenses*

### 2. Value Added Tax ("VAT") and invoices

#### ***(i) VAT for the transfer of assets and liabilities of financial institute***

According to the guidance of the GDT in the Official Letter No. 1485/TCT-DNL dated 17 April 2019, in case two banks enter into a Purchase Agreement to transfer the assets and liabilities of the bank, the VAT treatment shall be as follows:

- For asset items and liability items related to credit activities and software: not subject to VAT.
- For asset items including office, machineries and equipment: subject to VAT at the applicable VAT rate.
- For assets not directly related to the credit activities: subject to VAT at 10%.

#### ***(ii) Investment projects importing machinery and equipment with value from VND 100 billion or more shall no longer be entitled to VAT payment deferral***

On 3 April 2019, the Ministry of Finance issued Circular 18/2019/TT-BTC, repealing the contents of

Circular 134/2014/TT-BTC dated 12 September 2014, guiding the procedures for extending the deadline for VAT payment at import stage and VAT refund related to machinery and equipment imported to create fixed assets of investment projects. Accordingly, from 20 May 2019, investment projects importing machinery and equipment with value from VND 100 billion or more shall no longer be entitled to VAT payment deferral within a period of 60 days after the statutory deadline or prompt VAT refund.

### 3. Foreign Contractor Tax ("FCT")

*Foreign contractor is still subject to the administrative penalty handling in case the project management office in Vietnam has been closed*

According to the Official Letter No. 1638/TCT-PC dated 24 April 2019, even though the project management office of a foreign contractor in Vietnam is licensed to implement the construction work in Vietnam under an independent tax code and round seal, the foreign contractor who signs contract with Vietnamese party is identified as subject of business operation in Vietnam. Therefore, in case the project management office is dissolved, the foreign contractor (i.e. the party who signs the construction contract with Vietnamese party) still exists and thus is subject to the administrative penalty handling by Vietnam tax authorities.

### 4. Import duty, export duty and customs procedures

#### ***(i) Application of preferential import duty rate for on-spot-export transaction***

According to Official Letter 1064/LĐTBXH-For the consistency in applying the import duty rate for on-spot-export goods from 1 September 2016, and in the waiting time when the Prime Minister provides an official opinion, the General Department of Customs ("GDC") has recently issued the Official Letter No. 1909/TCHQ-TXNK dated 3 April 2019 addressing to all local customs authorities, accordingly:

- In case the goods is declared as on-spot-import from the a non-tariff zone into the domestic market, and the goods is qualified the conditions to enjoy the special preferential import duty rate following the provision of relevant Decrees of the Prime Minister, the special preferential import duty rate of the corresponding Free Trade Agreement shall be applied.
- Other than the above, and if the goods is qualified the requirement of having origin from Vietnam or other countries being the members of WTO who have the Most-favored-nation (“MFN”) status with Vietnam, the MFN import duty rate shall be applied.

**(ii) New regulations on the importation of used machines, equipment and technological lines**

On 19 April 2019, the Prime Minister issued Decision No. 18/2019/QĐ-TTg on the criteria, procedures, and dossiers to import and supervise the used machines, equipment and technological lines under Chapter 84 – 85 HS codes, which are imported for the manufacturing activities in Vietnam. The Decision takes effect on 15 June 2019.

**(iii) Guidance from GDC on the customs declaration and finalisation report to consumable supplies and tools imported for production of export goods**

On 27 May 2019, the GDC issued the Official Letter No. 3304/TCHQ-GSQL addressing to all local customs authorities, accordingly:

- Consumable supplies include those directly involve into the processing and manufacturing process but does not transform into the products or does not constitute the export products. The customs declaration type for consumable supplies can be E21, E31, E11 or E15, depending on each specific case.

The finalisation and notification of actual production norm to consumable supplies follow the guidance of Circular 39/2018/TT-BTC.

- Tools are determined based on the accounting standards and regulations. Accordingly, assets that are not qualified to be classified as fixed asset shall be considered as tools. The customs declaration types for tools can be G13 (applicable in case the tools are provided by the customer who places a processing order), or A12 (applied for other cases).

The taxpayer is not required to carry out finalisation and notification of actual production norm of tools.



## 5. Personal Income Tax (“PIT”) and labor regulations

### (i) Determination of PIT reduction amount for individuals working in economic zones for 2018 PIT finalisation

In accordance with Decree 82/2018/ND-CP, individuals working in economic zones are no longer allowed to enjoy 50% PIT reduction with effect on 10 July 2019. To further clarify the provision for 2018 PIT finalisation, the GDT has issued the Official Letter 1285/TCT-DNNCN on 8 April 2019 addressing to all provincial tax authorities, accordingly, the income that individuals received prior to the effective date of Decree 82 (i.e. for the period from 1 Jan 2018 until 9 Jul 2018) is entitled to 50% PIT reduction, which is determined based on the following formula:

$$\text{Reduced PIT amount} = \frac{\text{Total PIT payable in 2018} \times \text{Assessable income derived from economic zones that individuals received from 1 Jan 2018 to 9 Jul 2018}}{\text{Total assessable income in 2018}} \times 50\%$$

**(ii) Salary payment for overtime working hours received from overseas is still eligible to enjoy PIT exemption**

According to the guidance of the GDT in the Official Letter No. 14/TCT-DNNCN dated 3 January 2019, in case an individual receives income from an overseas organisation including salary payment for overtime working hours or night shift working hours, the income portion exceeding that paid for normal working hours is still eligible to enjoy PIT exemption.

The determination of the exceeding income follows the same basis of cases where the individual receives income from Vietnam.

**(iii) Income from the transfer of shares in a joint stock company would be subject to PIT at 0.1% on sales proceeds**

According to the Official Letter No. 1211/TCT-DNNCN dated 4 April 2019, the GDT confirms that “stock” is considered as a form of “shares”. Therefore, in case an individual assigns their capital in a joint stock company in accordance with the provision of Law on Enterprises and Law on Securities, the sales proceeds of the transaction shall be subject to PIT at the flat rate of 0.1%, following the guidance of Article 16 and Article 21 of Circular 92/2015/TT-BTC.

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