

Tax and Legal update

July 2017



1. Corporate Income Tax ("CIT")

(i). Foreign loan to fund a commercial residence real estate project is not allowed

According to Official Letter No. 156/BXD-QLN dated 15 June 2017 of the Ministry of Construction responding to the State Bank of Vietnam, it is understood credit institutes and financial organisations that do not operate in Vietnam are not considered lawful sources for funding loans. Subsequently, if a company incurred loan interest in this case, such interest expenses may be considered as non-deductible for CIT calculation purposes.

2. Personal Income Tax ("PIT ") and labour policies

(i). Compulsory insurance contributions are not deducted before gross-up for the period prior to 1 July 2013

According to Official Letter No. 2943/TCT-TNCN dated 4 July 2017, the gross-up formula in case an employee receives salary on a net basis shall be as follows:

- For the period prior to 1 July 2013: Compulsory insurance contributions are not to be deducted from net income before gross-up;
- For the period from 1 July 2013 onwards: Compulsory insurance contributions are allowed to be deducted from net income before gross-up.

The above is the official opinion the General Department of Taxation came to after a long consideration period and after consulting with the Ministry of Finance. It therefore is recommended that companies review and consider adjusting their PIT declarations and payments before a tax audit is performed by the tax authorities.

(ii). 10% PIT withholding applies to income of a non-business individual

According to Official Letter No. 2547/TCT-TNCN dated 12 June 2017, if a company hires services from a non-business individual, the payment to such an individual is considered employment income and subject to 10% PIT. The tax authority will not issue a red invoice to the individual in this case.

(iii). Promotion in-kind is not subject to PIT

According to Official Letter No. 2548/TCT-TNCN dated 25 June 2017, if a company organises a promotional campaign whereby the company would provide promotional gifts to all customers without there being a requirement to participate in a lucky draw or contest, and ownership or usage of the promotional gift is not required to be registered, such a promotional gift offering is not subject to PIT.

(iv). Experts of foreign contractors can authorise a Vietnamese party to declare and pay PIT on their behalf

According to 2700/TCT-TNCN dated 21 June 2017, if an expert of a foreign contractor is assigned to perform services in Vietnam, such an expert can authorise a Vietnamese party to declare and pay PIT on their behalf. The authorisation is required to be drafted in accordance with the provision of the Civil Code.

3. Value Added Tax ("VAT") and invoices

(i). Invoice for transportation services issued after the clearance date is still considered as a legitimate invoice

According to Official Letter No. 3029/TCT-CS dated 10 July 2017, in case a company A hires a company B to provide transportation services and company B issues an invoice for such services after the date on the export certificate of company A, if the services are actually performed and company B has declared and paid output VAT, and company A qualifies for a VAT refund for exported goods, the input VAT of the transportation invoice shall be refunded in accordance with the current regulations.

4. Foreign Contractor Tax ("FCT")

(i). Exchange rate for FCT calculation purposes

According to Official Letter No. 2935/TCT-CS dated 3 July 2017, the exchange rate to be used for FCT calculation purposes from 1 January 2015 (i.e. the effective date of Circular 26/2015/TT-BTC) shall be as follows:

- If a foreign contractor opens a bank account at a commercial bank in Vietnam: apply the buying exchange rate announced by such a commercial bank as at the payment date;
- If the foreign contractor does not have a bank account in Vietnam: apply the average inter-bank exchange rate (for the period from 1 January 2015 to 4 January 2016), or the central exchange rate of Vietnam Dong versus USD announced by the State Bank of Vietnam as at the payment date.

5. Tax administration

(i). Enforcement of tax management to electronic commerce activities (“e-commerce”)

On 16 June 2017, the General Department of Taxation issued Official Letter No. 2623/TCT-CS addressed to all provincial tax authorities on the enforcement of tax management for e-commerce activities carried out via websites and social networks. Some notable points are as follows:

- The tax authorities are to popularise tax policies as well as review and supervise the taxpayers carrying out e-commerce activities in order to ensure tax is declared and paid in accordance with the current regulations;
- The tax authorities are to carry out tax audits and tax inspections at organisations conducting e-commerce activities so that the tax management for e-commerce activities is in compliance with the current regulations; and
- The tax authorities are to proactively report to and consult the competent authorities to ensure smooth cooperation with the tax authorities with regards to tax audits and tax inspections for individuals and organisations doing business via e-commerce located at its managing location.



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