Vietnam

Legal and Tax Update

January 2014

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I. GUIDANCE ON PERSONAL INCOME TAX FINALIZATION 2013

The General Tax Department released Official Letter No. 336/TCT-TNCN on 24 January 2014 to provide specific guidance for 2013 Personal Income Tax (PIT) Finalization. Some noteworthy points of the guidance are as follows:

An employer who pays taxable income to employees during the year is required to submit the year-end PIT Finalization (even if no tax is withheld in the month or in the quarter). In cases of no income then no PIT Finalization is required.

The employer shall have the responsibility to perform the PIT Finalization on behalf of employees who authorize them to do so. Basically, cases where the employees can authorize the employer remain unchanged, except for some points as follows:

- The employee must be working at the company at the time of authorization;

- For employees who also have irregular income from other sources less than VND120million during the whole year and have already had 10%/20% PIT withheld, if the employees do not want to incde this income into the year-end PIT Finalization, then they can authorize the company to handle their PIT Finalization on the salary portion only. Similarly,

employees who have income from house rental or rental of land use rights less than VND240million during the year can also so authorize the company. However, employees having both kinds of income must handle the PIT Finalization on their own.

- In cases where the company has performed the PIT Finalization on behalf of the employees based on the authorization from the employees, but then find out that the employees are not among the eligible cases, then the company would not make adjustment, but must issue a PIT withholding voucher to such employees (per the finalization number) in which the company must state clearly that the company has prepared the PIT finalization on behalf of the employee based on the authorization. Then the employees will be required to conduct the PIT Finalization on their own.

Regarding family relief, the employee will be entitled to personal relief for full 12 months and to dependant relief from the first month the employee must take care of the dependant (if the employee has declared Form 16/DK-TNCN in which the starting time of dependant relief is after the actual first month, then the employee must re-register Form 16 together with the PIT Finalization dossier). However, for the dependants other than parents and children, the registration must be made no later than 31 December 2013.

For foreigners, the criterion of using a house rental contract to determine the residency status shall refer to the relevant regulation in each period (i.e. from January to June 2013: 90 days; from July to December 2013: 183 days). For those foreigners who must undertake the year-end PIT Finalization, then the criterion of house leasing contract shall be 183 days.
Regarding the determination of taxable income and tax calculation, the principles are the same (noted that there is difference in Family relief levels applicable from July 2013). For the conversion of net income to gross income, the guidance provides one example where total taxable income shall be determined as total of grossed-up income of each month. The calculation of taxable housing rental is also different between the period from January to June 2013 and period from July to December 2013).
The deadline for submission of 2013 PIT Finalization is 30 March 2014.

II. AMENDMENTS AND SUPLEMENTS TO REGULATIONS ON INVOICES

The Government has just issued Decree 04/2014/ND-CP on 17 January 2014 to amend and supplement a number of articles of Decree 51/2010/ND-CP in respect to invoices.

The thrust of Degree 04 is that any enterprise which would like to use self-printed invoices must register and get approval from the managing tax authority (tax authority must make its response within 5 working days). For pre-printed invoices, enterprises (except for those eligible to print pre-print invoices) will also have to register and get approval from the tax authority before placing the first pre-printed invoice order.

The Decree also provides for cases where enterprises are not allowed to use self-printed invoices or pre-printed invoices (such as those who have violated invoice regulations and have been charged for tax evasion, fraud or enterprises with high tax risk profile). Enterprises in these cases must purchase invoices from tax authority for 12 months; after this period, the tax authority will notify the enterprise whether they are eligible to use self-printed or pre-printed invoices or must continue purchasing invoices from the authority.

Decree 04/2014/ND-CP takes effect from 01 March 2014.

III. NEW REGULATIONS ON ADMINISTRATIVE VIOLATIONS ON INVOICES

Circular 10/2014/TT-BTC was released by the Ministry of Finance on 17 January 2014 and will be effective from 02 March 2014. This has replaced the previous regulations.. In particular, Circular 10 provides more detail on penalties applied (warnings and fines), the levels of fines of each violation, in which the maximum fine that could be imposed on organizations is VND50million. For the same violation, the fine for individuals is half of that for organizations (the fines regulated in the Circular are those applied to organizations).

The statute of limitation for sanctioning administrative violations on invoices is one year. However, for violations which lead to tax evasion, tax fraud, late tax payment, under-declaration of tax liabilities, then the statute of limitation is five years.

IV. GUIDANCE ON APPLICATION OF DOUBLE TAX AGREEMENTS.

The Ministry of Finance issued Circular 205/2013/TT-BTC on 24 December 2013 providing guidance on the implementation of Double Tax Agreements (DTA) signed between Vietnam and territories. This Circular takes effect from 6 February 2014, and replaces Circular 133/2004/TT-BTC dated 31 December 2004.
Circular 205 provides a clearer determination of resident and non-resident taxpayers (individuals and organizations). In addition, the Circular also specifies a number of cases in which the Vietnamese tax authority can refuse the application for a DTA, in particular where it is over three years from the day the tax was incurred up to the day of submitting the application Also cases where the contract is concluded only for the purpose of enjoying the special tax treatment of the DTA; and finally cases where the applicant is not the true beneficiary of the income that has been applied for tax exemption or tax reduction by virtue of the DTA.

V. REGULATION ON APPLYING OF ADVANCE PRICING AGREEMENT (APA).

Circular 201/2013/TT-BTC was issued by the Ministry of Finance on 21 December 2013 to provide guidance on the application of advance pricing agreements (APA) to tax administration. This Circular takes effect from 5 February 2014.

APA is a written agreement between the Vietnamese tax authority and a taxpayer, or between the Vietnamese tax authority, taxpayer, and the tax authority of a country or territory with which Vietnam has concluded a tax treaty for a certain period of time, where basis for tax calculation, pricing methodologies, or market prices are determined. An APA is proposed by a taxpayer and is subject to assessment and approval by the tax authority. The APA must be concluded before the taxpayer files the CIT Return.

With this Circular, the Ministry of Finance has provided detailed guidelines on APA application, transactions that could be covered under an APA, how to conduct an APA (e.g. for each transaction or group of transactions), and the effectiveness of an APA (5 years and can be extended for a maximum 5 years subject to conditions).

VI. NEW CIRCULAR ON TAX APPLIED TO ODA PROJECTS

The Ministry of Finance issued Circular 181/2013/TT-BTC on 3 December 2013 to provide guidance on the implementation of tax policies and tax incentives to programs, projects funded by Official Development Assistance (ODA) sources and concessional loans of donors. This Circular takes effect from 17 February 2014, replacing Circular 123/2007/TT-BTC dated 23 October 2007.

One of the new points of this Circular are the supplementary guidelines on tax policies to projects funded by many forms of assistance (ODA and concessional loans); regulations on VAT refund of non-refundable ODA projects where part of the capital is domestic. In particular, for non-refundable ODA projects having a part of capital sourced from counterpart capital from the State Budget or capital contributed by people, then any VAT refund shall only be applied to goods, services purchased from the non-refundable ODA sources ; goods or services purchased from the counterpart capital from the State Budget and capital contributed by people will not be entitled to any VAT refund. The ODA projects which have been approved prior to this Circular shall still refer to Circular 123/2007/TT-BTC regarding the determination of tax obligations and tax incentives until the project is ended.

VII. RE-REGISTRATION AND RENEWAL OF INVESTMENT LICENCE

Decree 194/2013/ND-CP was issued on 21 November 2013 providing guidelines for the re-registration of foreign-direct invested (FDI) enterprises and renewal of investment license of investment projects in the form of Business Cooperation Contract (BCC). According to this Decree, FDI enterprises which were granted Investment Licenses prior to 1 July 2006 shall have the right to decide the time for re-registration (effectively meaning that there is no time limit as before).

In addition, FDI enterprises which were established prior to 1 July 2006, where the license expired after 1 July 2006, but not yet implemented any dissolution procedure, and still wanting to continue in operation will be able to re-register upon satisfaction of certain conditions. However the deadline for such re-registration is 1 February 2014.

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VIII. REGION-BASED MINIMUM WAGE FOR 2014

Decree 182/20013/ND-CP issued on 14 November 2013 has provided new region-based minimum wage levels for laborers working for enterprises, cooperation groups, farms, households, individual and agencies employing laborers. This is applicable from 1 January 2014:

- For enterprises operating in localities of region I: Minimum wage is VND 2,700,000/month
- For enterprises operating in localities of region II: Minimum wage is VND 2,400,000/month
- For enterprises operating in localities of region III: Minimum wage is VND 2,100,000/month
- For enterprises operating in localities of region IV: Minimum wage is VND 1,900,000/month.

IX. REGULATION ON CASH PAYMENTS

On 31 December 2013, the Government issued Decree 222/2013/ND-CP regulating cash payments and state administration of cash payments in a number of scenarios.

Accordingly, enterprises are not permitted to make cash payments in transactions for capital contributions, purchase and sale or assignment of capital contribution shares.

Credit institutions and foreign bank branches can agree with their customers on plans for withdrawing cash and on the customers providing advance notice before the withdrawal of large amounts of cash.

This Decree is in full force and effective from 1st March 2014, replacing Decree 161/2006/ND-CP dated 28 December 2006.

X. REGULATIONS ON FOREIGN INVESTORS PURCHASING SHARES IN VIETNAMESE CREDIT INSTITUTIONS

On 3rd January 2014, the Government issued Decree No. 01/2014/ND-CP regulating the purchase of shares by foreign investors in joint-stock credit institutions and credit institutions when they convert their legal form to joint-stock credit institutions . Regarding the shareholding ratios allowable to foreign investors:

- The shareholding ratio of a foreign individual must not exceed 5% of total charter capital of a Vietnamese credit institution;
- The shareholding ratio of a foreign organization must not exceed 15% of total charter capital of a Vietnamese credit institution. In the circumstance where the foreign organization is the strategic investor, the maximum shareholding ratio is 20%.
- Particularly for commercial banks, the total shareholding ratio owned by foreign investors must not exceed 30% of total charter capital.

This Decree also regulates the conditions for foreign investors' ownership of the shares, procedures and dossiers for the share purchase of foreign investors in Vietnamese credit institutions.

This Decree is effective as from 20th February 2014 and replaces Decree 69/2007/ND-CP dated 20 April 2007.

XI. TEMPORARY GUIDELINES ON PROCEDURES TO APPLY FOR ISSUANCE OF WORK PERMITS FOR FOREIGNERS.

The Official Letter ("OL") No. 16116/SLDTBXH-LD issued by the Department of Labor, Invalids and Social Affairs ("DOLISA") of Ho Chi Minh City dated 9 December 2013 provides temporary guidance on procedures for applying and issuing work permits for foreign employees until such time as a Circular is published to provide guidance for implementing Decree No. 102/2013/ND-CP issued by the Government dated 5 September 2013. Accordingly, the application dossiers for work permit for foreigners will be implemented in accordance with Article 10 of Decree No.102/2013/ND-CP; forms as per attached with the OL 16116/SLDTBXH-LD.

Regarding the approval needed by Chairman of the Provincial People's Committee for using foreign labor, during the period prior to the circular,, DOLISA requests the employers to complete Form 2 and Form 3 attached to OL 16116/SLDTBXH-LD, in which the employers must state clearly the reason of not using Vietnamese labour. In this regard, on 3rd January 2014, the Chairman of the HCMC People's Committee has issued Decision 13/QD-UBND to officially delegate his responsibilities to the head of

authorities of the industrial and export processing zones, and hi-tech zones in HCMC and to the Director of the HCMC DOLISA.

Similarly, Hanoi DOLISA has issued Official Letter No. 2539/LDTBXH-CSLDVL dated 6th November 2013 to provide temporary guidance on the work permit process.. According to this guidance, for the procedure of registration to use foreign labor, enterprises need to submit the application dossier (including an explanation letter with details of each job position and detailed list using Form 14 of Circular 31/2011/TT-BLDTBXH) to DOLISA (then DOLISA will report and obtain approval from the Hanoi People's Committee).

XII. OFFICIAL LETTER GUIDING THE TIME OF ISSUANCE OF INVOICES FOR CERTAIN KINDS OF SERVICES

On 14/10/2013, the Ministry of Finance issued Official Letter 13675/BTC-CST providing guidance on the time of issuance of invoices for certain kinds of services including: accounting, auditing, financial and tax consultancy; appraisement; technical surveying and design, supervision consultancy; construction project establishment services. Accordingly, at the time of receiving deposits or advance for guarantee of contract implementation (at that time the service is not provided yet), the service provider shall not issue issue VAT invoice for such deposit or advance.

XIII. OFFICIAL LETTER GUIDING THE ABBREVIATION OF NAME AND ADDRESS ON INVOICES.

On 10th December 2013, MOF has co-ordinated with the General Tax Department to issue Official Letter 4291/TCT-CS providing guidance on the abbreviation of name, address on invoices.

In principle, when issuing (receiving) invoices, the name and address of the seller and buyer must be stated exactly as in the Business Registration Certificate and Tax Registration Certificate. However, in circumstances where the name, address of the buyer is too long, the seller can abbreviate a number of popular nouns indicating address, types of business, etc. but must still ensure the sufficiency of the house number, name of street, ward, commune, district, city which clearly show the enterprise is in line with the Business Registration Certificate; then, that invoice will be acceptable for tax purposes.

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